LIBRARY OF CONGRESS.
Chap. E459 Copyright No.
Shelf .S835
UNITED STATES OF AMERICA.

5390.C1

A REVIEW

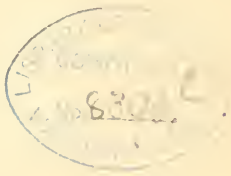
OF THE

FIRST VOLUME

OF

ALEXANDER H. STEPHENS'S

"WAR BETWEEN THE STATES."



BY

CONSTITUTIONALIST.

PHILADELPHIA:
J. B. LIPPINCOTT & CO.
1872.

E159
.S835

Entered according to Act of Congress, in the year 1872, by
J. B. LIPPINCOTT & CO.,
In the Office of the Librarian of Congress at Washington.

PREFACE.

FINDING he could not do the subject justice within the ordinary limits of a review, the author has resorted to this form of presenting his views of the errors in the first volume of Mr. Stephens's "War between the States;" and he knows of no better way to present to the public his theory of the Government of the United States. And, that some things may be explicable, he thinks it material to state that the review was written more than a year before publication.

CONTENTS.

CHAPTER VIII.

CHAPTER IX.

REVIEW.

CHAPTER I.

INTRODUCTION.

When Hildebrand was on his death-bed, he absolved all the world except Henry the Fourth of Germany, and Clement the Third. So, when we have looked on the empty sleeves, and the crutches halting through the land, the broken-hearted mothers and widows, the refinement and wealth groveling in poverty and worn with care; when we have been told of the prison horrors, the desecration of the dead, of the burning of peaceful homes, the carnage of the battle-field, and all this, and more than all this, by brethren and Christian brethren of the same blood, we have sometimes felt that, had we the power of absolution, we would, like the haughty pontiff, except the authors of all these woes.

After reading Mr. Stephens's book, and noticing the earnest convictions of one so wise and good, of the supposed truth of the delusion lying at the root of the great crime of the century, we can but excuse, if not forgive, the less gifted, who were moved to join in the deed by those in whom they confided.

No one need flatter himself that the great crime cannot be repeated, that the battle-field has settled what polemics could not, and that secession is a dead issue; for the lost cause, like a dead friend, is the more precious because lost.

As Mr. Stephens's book proves, the argument has been resumed; and as it has been, it will be again; for no matter how clearly refuted, "the refutation will be thrust aside, and the false theory urged with all the earnestness of a new idea."

In the South, before the war, the Union cause had some advocates, on the stump and in the press; now, none so poor,

if they dare, as to do it reverence. Then, most of the talent, wealth, and influence was on the side of the disorganizers; now, nearly all. And then many were proud to be Unionist and honored the old flag; but now it is a disgrace to be "loil."

We do not say that now any are designing immediate secession or revolution; but the right of the former was never, at the South, so stoutly maintained or so universally believed in.

Nothing could have been more unfortunate for the future stability and peace of the country than Mr. Stephens's book; for thousands will believe, because it is from his pen, as if written by inspiration.

That he is conscientious is all the worse, because it has given an earnestness and intensity to his convictions that will infect most Southern readers.

While Mr. Stephens writes to restore by the ballot what he calls "the only true Democratic party or constitutional party which has ever existed" (see letter to Mr. Curtis, Aug. 31, 1869), he seeks to put the country *in statu quo ante bellum;* and the recognition of the right of secession will, sooner or later, find a Carolina ready to say the hour has arrived for its exercise.

The lecturer, from the stage, is telling the people, with applause, not "to let bygones be bygones," that "the future will yet bring the hopes of the past," and that "there are those who will again be found to wear the gray and go forth to battle for the cause of the South."

The newspapers, while on their best behavior, keep alive the sectional feeling of war and ante-war times as bitterly, if not more bitterly than ever. One, speaking of the young men from Georgia at West Point, says:

"Taking the conqueror's shilling and wearing his uniform will dig a gulf as deep as that which separated Lazarus from Dives, between them and their countrymen and women."*

A leading Democratic paper, of August, 1869, opposing the burial of "old issues," says:

"The most effectual way to do this [*i.e.* revive old issues], we maintain, is to revive and bring into active operation the time-honored principles of the Kentucky Resolutions. . . . . Can these principles ever be revived? Here is the question. We have before maintained, and still maintain, that they can and will be if the people prove true to themselves. . . . But never let it be said that the principles of the Kentucky Resolutions (which so clearly and truly set forth the nature and character of our Government

* We have selected extracts from papers of Mr. Stephens's own State.

and all our safeguards of liberty) are dead. When they die, will die and be buried every principle of American liberty."

Mr. Stephens, in one of his letters to Judge Nichols, speaks of the Southern people as having abandoned secession, but in a few sentences following, after speaking of what is maintained in his book and by those lately controlling the Government, asks:

"Shall this abnormal action of the Government be corrected *by the people at the ballot-box?* Shall the administration be *brought* back to the standard of principles so generally recognized in the better days of our history? or shall it be permitted to go on in its present course until even the name of a Republic is ignored? This is the *living* issue I presented. It is now the chief practical question between the people of the several States. It involves, on the one side, constitutional liberty, as established by the fathers; on the other, consolidation, absolutism, and monarchy. . . . . Between these the people must choose. They must take one side or the other. There are but *two* great political principles in antagonism in this country at this time."

By the words we have italicized,—if, indeed, it was necessary,—will be seen the principle of his book. The right to secede is a living issue—as it should be, if he be right.

It is old secession language, that we heard from every stump and read from every secession newspaper before the war. The old fight will be, is, renewed, with no variation except substituting freedmen for slaves and Republicans for Whigs. Secession by acts—or possibly revolution may be the word—will be kept in the background, as it was until just before the war, and until the country shall be ripe for "conclusions."

The elements of combustion were never more inflammable, and if the engines of suppression were not thought to be too strong the torch would be applied any day.

Mr. Stephens says of secession:

"It is no longer looked to, in any contingency, as a practical remedy or check against any usurpation or abuse of power on the part of the Federal Government. This abandonment, on their part, has been manifested in every form in which public as well as private honor can be pledged. . . . . Even the Southern generals in the New York Convention, last year, to whom such an unkind allusion is made by Judge Nichols, gave their pledged honor to this abandonment, by unanimously sustaining the platform of principles then announced."

What does such a declaration amount to, when he tells us in the same letter that the old *right* of secession, or the doctrine of the Kentucky Resolutions, is the living issue? It can mean but a temporary abandonment of a right that can't be used just now. Why, Mr. Stephens, "if no longer looked

to as a practical remedy in any contingency," be so assiduous in teaching it? Why write a volume whose main object is to sustain it? And why say to Judge Nichols, when speaking of what you choose to call the "abnormal action of the Government," that it is the "living issue, . . . the chief practical question"? Why all this, and "more of the same sort," if secession "is no longer looked to, in any contingency, as a practical remedy or check against any usurpation or abuse of power on the part of the Federal Government"? And though *you* may design to have only the abstract right established by the ballot-box, yet you say *its* assertion caused the war; and why may it not cause another? Why establish a principle to be of no practical use? Don't you know that to bring a party into power which will be but the old Buchanan administration of the North with its secession power at the South, is to bring back *ante bellum* times? And don't you know that there is no satisfying or conciliating the old secession element but by placing it in power, and that such power means mischief?

No doubt the generals alluded to by Mr. Stephens have ever since been, and are now, advocating the right of secession, and would put it in practice to-day if they dared.

They and Mr. Stephens, believing as they do, *should* exercise the right when it can succeed, if the former have half the chivalry claimed for them.

The Constitution is declared to be utterly disregarded, the South ground to powder by the iron heel of oppression, and the Government in the hands of fools and knaves; and should any brave patriot, under such circumstances, hesitate a moment to apply "the rightful remedy" whenever it can avail? And no wonder a leading Democratic paper of Mr. Stephens's own State, and one of his greatest admirers, on the 4th of September, 1869, said:

> "The South, indeed, has, at the menace of the bayonet, been compelled to assume a false attitude; but she will not keep that attitude any longer than she can help. The moment she becomes a free agent she will cleave down the villanies thrust upon her by force and fraud."

Call you that a dead issue, Mr. Stephens? Will not—*ought* not—that editor, and nearly all the Southern whites believing with him, put in practice the "dead issue," so ably and laboriously taught by you, as soon as they dare? And will you not say, they will dare "go as far as he who goes farthest"?

Hear another of his belligerent brethren, who, speaking of the "dead issue," says:

"There never was a doubt in our mind in regard to our some day, in one way or another, regaining the 'Lost Cause.' In that our faith is strong, and our trust is strong. Nothing can shake either. We believe it; we feel it; we write it; we speak it; and, were a dungeon door open for us to-morrow, rather than forego that faith or cease to utter it, we would enter there and suffer death; and few are the readers of the *Banner of the South* who would not do likewise."

The *Griffin Star*, a Democratic or secession paper, speaking of the contemplated European war, said, in July, 1870:

"Then, again, there is another and much greater hope looming up in the distance, and that is *Southern Independence*. For, be it known, we (our individual self) have never given up this idea. We will insist that the *North and the South cannot permanently and peaceably live together in the same household*. While this is true, it is equally true that we cannot, unaided, achieve our independence. Should Europe, however, engage in universal war, European possessions in America must be involved, and through these complications the United States must inevitably be drawn into the contest. Then it will be seen and known that the South will join fortunes with any European power that will guarantee us freedom from the thraldom of the North."

We could multiply, indefinitely, from secession papers in Georgia alone, as are the above, extracts showing that the issue of the right of secession is as alive as it was before the war, and that the material is as ready and eager to put it in operation as in 1860. Not only so, but the feeling of sectionalism and hostility to the United States Government and its loyal citizens is nursed with a bitter malignity, manifesting a determination that it shall not become extinct, but will lie in wait, ready to act when the wished-for day and hour arrive.

What secession paper speaks of the glory and power of the United States, or its old flag, or utters one sentiment to sustain it? It is Southern this, and Southern that, only, which is commendable; and all that is Northern is hateful. One paper says:

"Our opinions are now just what they were before the war, and we express them; we always did and always will hate Yankees, the whole nation of them, no matter whether they are in a Macon or New York sanctum."

Another says:

"It is a hard thing, however, to accuse an innocent party of being a loyalist, or of being of Northern extraction, as either is damaging to his reputation; and we seriously ask pardon of the gentleman we have so injured."

Pages could be filled with such loving extracts, if space permitted. The avaricious has lost his property, the ambitious his hopes, the false prophet his reputation, the pseudo-

statesman his character, the Gascons the admiration of those to whom they promised that they would run the whole Yankee nation with a cowhide; and the maiden, hanging her harp on the willow and ceasing to sing the songs of Dixie, brings down her little clinched fist with vehemence on the calico covering the right knee, and declares she would not marry "a whang-nosed, big-footed Yankee, to *save* his life,"—with a long-drawn-out emphasis on the word save.

And why should they not, believing, as Mr. Stephens teaches, that they have been deprived, by the iron hand of power, of the great constitutional right of secession, and believing, as the press teaches, that the United States is the most cruel tyranny that ever conquered a foe? And it is true, as Ben Hill said in one of his rhapsodies, that a people who have hard and unjust terms forced on them by the overweening hand of relentless force, are right in throwing it off, in defiance of treaties and all other obligations, whenever circumstances will permit. Believing such things, the Southern people should bide their time—as they are biding it—to throw off such alleged unjust impositions. The South is, and will for years, if not always, be, to the United States what Poland is to Russia, and Ireland to England. And those who may contemplate involving this country in war, will act unwisely not to take this threatening element into account.

All this may be right or wrong: it is not material to our argument which. The fact that it is so is very material, as showing that it is a living and dangerous question that Mr. Stephens agitates, and that it is as important to be combated now as it was ten years since. Bayonets may prevent action, but they will only increase the desire to act. Nothing will avail but to change the will, and that can be done only by convincing the mind by such arguments as will expose the sophistry so diligently and powerfully taught for the last three-quarters of a century. To this end we design reviewing the first volume of Mr. Stephens's "War between the States." In doing so, we are not combating an abstraction, for it is as vital and dangerous a question as it ever was, and such, we fear, the hidden future will reveal.

We shall pursue the course of Mr. Toombs in his lecture at Boston,—given in the appendix to Mr. Stephens's book, and of course approved,—and show *from the Constitution* its meaning. We will interpret its object and intention by what it says, and not by what Mr. A. said, or Mr. B. thought,—what Mr. C. called it, or Mr. D. said was its object.

Nearly half the volume we review is occupied with such unprofitable labor; a whole one, nay, a dozen, could be filled with evidence to the contrary. As Mr. Stephens says, in one place, ours is unlike any other government before made, and therefore no wonder that men were at variance about its proper name,—and indifferent, too,—as no one ever supposed a name could alter its character.

There is hardly a man in the United States as old as Mr. Stephens—and not excepting him—who has not called it by different names,—such as the Federal, the General, or the National Government. That the same diversity exists as to the meaning of the Constitution, could be also shown, if it were profitable. Of all interpretations of its meaning, we would prefer any to that of that renowned book, "The Federalist." We admit it was written by wise men, and has many excellent ideas about government, but we would as soon take a lawyer's opinion of his case before a jury; for, like lawyers before a jury, the authors were arguing a political case before the public.

The State of Georgia lately gave an apt illustration of the reliability of the opinions of politicians, while trying to carry a political question before the people. In both cases the question was as to the ratification of constitutions; and Mr. Stephens will remember that all the Democrats, when the late Constitution of Georgia was canvassed before the people for adoption, held that it gave the right to hold office to the freedmen, and that nearly every white Republican held the contrary. But so soon as it was ratified, positions were changed, the Democrats maintaining that the blacks could not hold office,—and expelling the colored members of the Legislature on that ground,—and the Republicans arguing the reverse. The opinions given in "The Federalist" were by writers under the same temptation to suit them to the emergency as were the Georgia politicians; and we presume politicians were then such as we have them now.

The rule of law, that no verbal testimony shall be admitted to contradict or vary written evidence, is founded in such good sense that it has met with universal approbation.

Who ever heard of a judge deciding a law according to the opinion of a member of the Legislature which passed it? If permitted, laws would not speak for themselves, but interrogatories and subpœnas would have to be issued to take the evidence of the members of the Legislatures as to what they meant; so the law, which should be permanent, would depend, not on the statute-book, but on the memory and

veracity of members of the legislative body which may have passed it.

Even if an instrument call itself by a wrong name, that will not change it in substance. Thus, if a paper naming itself a *deed* should turn out, in fact and substance, to be a will, the judge will so decide, notwithstanding the misnomer. So, if a Constitution should call itself a Confederacy, or a Federal Constitution, but should turn out, in fact, not to be such, the name would not alter the thing. So it is manifest, as when arguing on a private instrument between individuals, a law or constitution must, on the soundest and wisest principles, be interpreted according to the recorded meaning. Therefore, without the example of Mr. Stephens's friend, Senator Toombs, we should be excused from bringing up witness against witness, in the fruitless contest of trying to do, by such means, what all the witnesses in the world could not do.

Mr. Stephens, besides the above lecture, gives Mr. Calhoun's great speech on his celebrated resolutions, introduced in the United States Senate, indorsed by his (Mr. Stephens's) admiration and approval. We shall therefore treat it as a part of the book, and of Mr. Stephens's opinions.

We agree with Mr. Stephens in his admiration of this, one of the greatest speeches we ever read, and pre-eminently great in its sophistry; and for that reason the more to be admired for its ability. For, while Mr. Webster showed great power in demonstrating the better cause to be so, Mr. Calhoun showed more in proving the *worse* to appear the better. While we admit it was, in some things, unanswered by Mr. Webster, we deny that it is unanswerable, as we hope to make manifest in this review.

If Mr. Webster had made the question a lifetime study, as Mr. Calhoun had, we presume he would have effectually answered the latter. It matters not, however, which was the greater man; but which was right, is the important question. We will show, in another place, that Mr. Calhoun failed also to answer his antagonist on some of the most important questions in the argument.

Mr. Stephens's book is written in good temper and good English, and, though we may not be able to imitate the latter, we will try to emulate the former. For, having the highest respect for Mr. Stephens on many accounts, and the most lasting gratitude for his advocacy of the Union cause, with an ability that no other Unionist could exercise, we intend treating him, personally, with the respect he merits, and his

arguments with all the fairness we are capable of. Indeed, Georgia has reason to be proud of Mr. Stephens as an orator, statesman, and writer.

No one can read his book without being impressed with his earnestness, and with the intensity of his convictions,—so much so that, however much one may hope to convince the reader, there can be but little hope of convincing him,—if it were possible to convince him against his will.

Mr. Stephens has the character of being impatient of contradiction, and we take no pleasure, so far as he is concerned, in giving food for such impatience, though we have been impatient ourselves to see the many errors in the volume under review contradicted.

We have waited for months, hoping and expecting that some pen more competent to the task would have exposed the dangerous and obvious errors taught by Mr. Stephens. And our anxious fears have increased at hearing, at the South, an almost unanimous approbation of the revival, with unusual energy, of the fatal and, as the world supposed, exploded doctrine of secession, until we, unused to book-making, have been moved to expose the many vulnerable points in the volume aforesaid, and of the secession sophists generally.

Though Mr. Stephens opposed secession, the secessionists are not only his personal, but have been, with the above exception, his political friends. For, in all the issues which he has fought in his eventful political life, they have generally been of "his side." Then, it is reasonable to presume, as his book indicates, his sympathies are with his old personal and political friends, and their approbation the object of his ambition. Though it may be amiable in Mr. Stephens to say pleasant things to and of his friends, we will show that his ambition to secure their approbation has (we fear) made him forget, in some cases, the duties of the historian.

Mr. Stephens, and every sensible man, knows that slavery is, and will be more odious to the civilized world, and, therefore, in his introduction, he seems to wish to shelter secessionists from the wrath to come of posterity, for warring to sustain the "accursed institution," and strives to present them as the champions of State Rights, rather than of slavery.

As Mr. Stephens's meaning is more fully expressed in his letter to the *National Intelligencer* of June 4, 1869, than in his book alone, we will give a few extracts from the former, as well as the latter, relating to this subject.

A condensed extract from the book, given by the *Intelligencer*, is as follows:

"Negro slavery was unquestionably the occasion of the war, the main, exciting cause on both sides, but was not the real cause—*causa causans*—of it.

"The war was inaugurated on the one side, to vindicate the right of secession, and on the other, in denial of the right, and to its exercise. It grew out of opposing views as to the nature of the Government, and where, under our system, ultimate sovereign power resides."

In the letter, Mr. Stephens says:

"The real cause of the war, as set forth in the issue presented by me, condensed in a few words, was the denial of the fact that ours was a Federal Government; that the violation of this fundamental principle of our complicated organization, on the part of those controlling the General Government at the time, by assuming that the United States constituted a *nation of individuals*, with a consolidated sovereignty in the central Government, to which the ultimate as well as primary allegiance of the citizens of the several States was due, and that any attempt by the several States, or any of them, to resume the sovereign powers which had been previously delegated, in trust only, by them to the federal agency, was rebellion on their part."

"This violation of organic principles is stated to have been the *immediate and real cause of the war* [italics ours]—*the causa causans* of it. . . . On the part of the seceding States, it was carried on purely in defense of their right to withdraw from the Federal Union of States, which they claimed as a sovereign right."

From the way Mr. Stephens puts it, the war was to settle a principle, not to redress a real or supposed injury; the seceded States were like a man going into a ruinous litigation to settle a point of law,—simply to vindicate his opinion of a legal question, and not to redress any wrong or recover a right. If this be true, it is the first time in the history of the world that a man or nation has been guilty of such folly. South Carolina, in her crazy stage of nullification, was about to commit such a folly when her Governor ordered a cargo of sugar to Charleston without paying duties; but even she soon thought better of it.

England might have claimed the right to tax the Colonies and to impress seamen for a thousand years, and if she had *done* neither there would have been no war of 1776 nor of 1812. So the Southern States might have asserted the *right* to secede for five hundred years instead of half a century, and there would have been no war if there had been no secession in fact, with its concomitant rights as claimed by the secessionists.

If to decide the right, or any other doctrine of State rights, had "been the immediate and *real* cause of the war," if "on the part of the seceding States it was carried on purely in defense of their right to withdraw from the Federal Union," it should and would have been so stated in the ordinance of

secession, or report of the committee of seventeen who reported the reasons for its adoption. There, of all places, is the proper one to look for the causes of the war. But in that report the secessionists have cut themselves off from the excuse which their apologist would make for them. Let the reader look at the report and secession ordinance at the Georgia Secession Convention, and he will find that nearly the whole of it is slavery, slavery, "the nigger, the nigger," from beginning to end, except some little about the navigation and tariff laws, thrown in as make-weights, without a word as to what Mr. Stephens says was purely and immediately the cause of the war.

Mr. Stephens was a leading member of that convention, and one of the committee of seventeen who made the report; and if the cause of the war was not properly stated he should have moved to amend the declaration in the report and to declare the cause to have been such as stated in his book and letter. It is certainly the strangest thing known to history that "the immediate and real cause of a war," for which it was "purely carried on," should have been omitted in a manifesto purporting to set forth to the world the "causes"—to use the language of the report—for taking up arms.

As we are writing not to expose Mr. Stephens, but his arguments, we are glad to be able to clear him from any charge of misstating facts for the purpose of tempering the indignation of the world against the greatest political criminals of the continent and age, for whose characters and good opinion he seems solicitous.

The mistake of Mr. Stephens is that he takes a justification or argument in favor of the war, as its cause; as would one who should take the law and authorities, cited in support of a suit at law, as the cause of the litigation.

The cause of the war was slavery, as abundantly appears from the appendix in the volume reviewed and its pretended justification, the State Rights taught by Mr. Stephens.

If the report and ordinance of secession of Georgia were not so conclusive, we would refer the reader to the newspapers and speeches of the day, and circulars and pamphlets which were snowed from the Potomac to the Pacific, from the upper Missouri to the Gulf, and over fifteen degrees of latitude and fifty of longitude. But no cumulative evidence is necessary after the acknowledgments made by the Georgia Convention.

We have seen no reasons given for secession by any other

State except Alabama, and they are—the election of Lincoln and Hamlin "by a sectional party, avowedly hostile to the *domestic institutions*" of Alabama, "preceded by many and dangerous infractions of the Constitution," etc.

One of the specialties of Mr. Stephens is the State Right doctrines of the Kentucky and Virginia Resolutions, and he may have thought that the secessionists esteemed it as paramount a consideration for the war as he.* *He* knew that secession was not necessary to preserve slavery, and that it was safer in the Union than out, and that the leading secessionists who moved in the matter knew so too, and therefore he could well believe that with them it was not the cause of the war; and for that reason he may have been led to state the cause of the war to have been what *he* thought was—or should have been—the true one.

We can give a better cause for the war than has Mr. Stephens.

From the time of the Missouri compromise, the Southern politicians began to learn that nothing controlled the votes of the South like an alarm as to the security of slavery,—that nothing was too unreasonable to be given as cause for such alarm, no remedy too rash that was offensive to "the North," and no punishment too severe—even death—for any one suspected of doubting the divinity of "the institution;" for it was only necessary for a brutal and ignorant mob, called public opinion, to cry, "Crucify him! crucify him!" in order to carry to the gallows the best, wisest, and most innocent of the land.

Like the Girondists, the leaders soon found that the people were more fanatic than *their* fanaticism; but, unlike the Girondists, they had not the honesty and courage to face the whirlwind they had sown. The madness progressed until many believed their own lies, and finally believers and unbelievers in the delusion, in their struggle for the sweet voice of "public opinion," strove who should go farthest in rash remedies for what needed no remedy at all; and secession being as far as he could go who went farthest in folly and madness, there was a general rush of the deluded which swept along many of the undeluded to the final catastrophe of war and defeat.

---

* Some have attacked the inconsistency between the volume under review and Mr. Stephens's Union speech of 1860. But it was consistent to vindicate *the right* in the one, and deny the policy of its exercise in 1860 in the other. Indeed, his State Rights opinions have always been the same.

The leaders deluded the people to believe that secession was necessary to save slavery, and now Mr. Stephens's book would—wittingly or unwittingly—delude the outside world and posterity to believe it was for another and higher purpose. But so far as Georgia, at least, is concerned, the above report and ordinance forbid.

The truth is, the leaders cared nothing for the *right* of secession, further than to cheat the people into the fatal step; for when Governor Johnson moved, in the Confederate Senate, a resolution declaring the right of a State to secede, he was silenced—how or why, not being in the secrets of that body, we can't say. But it is very plain that, if the cause of the war had been such as stated by Mr. Stephens, it would have taken the earliest occasion to adopt that Senator's resolution.

To believe that such a war could have been waged for four years, not only without a declaration of its cause at any time by its champions, but that they should have refused to acknowledge it to be a correct principle by adopting it for the new government when challenged to do so by Governor Johnson, is not to be believed on the speculations of Mr. Stephens or any one else. Mr. Stephens was the presiding officer of the Confederate Senate, and if he has stated the true cause of the war in his book, he should, to vindicate his character as a historian, explain the two damaging records we have noticed, and his silence in the bodies making them and of which he was so important a member. It all admonishes us that contemporaries cannot write impartial history.

We know the *right* to secede was often given as a justification of the *act;* but no one before Mr. Stephens ever held that slavery did not cause the exercise of the right, and that secession and war did not take place to protect, or under the pretense of protecting, slavery.

CHAPTER II.

THE CONSTITUTION WAS NOT RATIFIED BY "THE STATES" AS POLITICAL BODIES, BUT BY THE PEOPLE AS DISTINGUISHED FROM SUCH BODIES.

THE object which Mr. Stephens seeks to establish by his first volume is, that a State has the right to secede from the Union called the United States, and by such secession to absolve its citizens from all obedience to the laws of the latter, and from the pains and penalties of treason that might otherwise be incurred by taking up arms, by its command, against the United States.

Though we will, in the end, differ with Mr. Stephens as to the necessary consequences of secession, for the present, and until then, we will use the term with the meaning he gives it. The *right* to secede necessarily makes it a *wrong* on the part of the United States to prevent it.

The propositions by which Mr. Stephens seeks to establish the above conclusions are found in the contents of his eleventh colloquy, and are thus stated:

"That the Constitution is a compact between sovereign States—the Government of the United States is strictly a Federal government—each State, for itself, has the right to judge of infractions, as well as the mode and measure of redress—the right of a State to withdraw from the Union, upon breach of the compact by other parties to it, springs from the very nature of the government—the compact was broken by thirteen States of the Union."

As no chain is stronger than its weakest link, so, if we shall be able to break any one of the links which support his conclusions, they must fall to the ground. We think we shall be able to convince the impartial and intelligent reader that none of Mr. Stephens's propositions are true; if true, his conclusions do not follow; and that, according to him, Georgia did not secede.

The word "compact," generally used by secession politicians, means, and can mean, nothing more than a contract between States. They may have fallen in love with it because used in the Kentucky and Virginia Resolutions, the fountains

from which flowed the waters of bitterness that the poor deluded Southern people have drunk for the last ten years. Be that as it may, we shall use the words as synonymous.

Mr. Stephens's first proposition, "That the Constitution is a compact between sovereign States," contains, in fact, three. First, that the Constitution is a compact; secondly, that the compact was made by *States;* and thirdly, that those States are sovereign. For understanding the argument better, we will consider first, of this triple proposition, the one that the Constitution was made by States.

It is admitted, by Mr. Stephens, that the Constitution was made, or agreed to, when it was *ratified.* It had no binding force until then; all that occurred before were but offers and negotiations, and when the proposals were finally arranged, on all sides, it was offered for ratification to the parties to be bound by it—the people—as a private deed would be to the grantors for signature, sealing and delivering. That this was Mr. Calhoun's idea is manifest from the latter clause of the first of his celebrated resolutions. Speaking of the States, it says:

"Each binding itself by its own particular *ratification;* and that the Union, of which the said compact is the bond, is a Union between the States *ratifying* the same."

Now, this having been done by each *State*, separately—according to the doctrine of Mr. Stephens and Mr. Calhoun—it is very material to inquire, What is a State?

Fortunately, Mr. Stephens gives definitions enough as to what constitutes a State. At page 137, speaking of how the Constitution was submitted for ratification, he says, "It was submitted to the States in their *political* organizations, and by them as States it was so agreed to and ratified."

At page 204 he asks:

"My dear sirs, what is a State? Did not the framers of this instrument (the Constitution) understand the meaning of the words they used? Is it not a body politic,—a community *organized* (italics ours) with all the functions and powers of government within itself?"

Vattel says:

"Nations or States are bodies politic; societies of men united together, for the purpose of their mutual safety and advantage, by the efforts of their combined strength. Such society has her affairs and her interests; she deliberates and takes resolutions in common, thus becoming a moral person, who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights."

Mr. Stephens proceeds to ask, "Were not the States for

which this Constitution was formed, and by which it was adopted as a bond of union, such bodies politic?"

We have it admitted, by Mr. Calhoun and Mr. Stephens, that a State is a "*political* body,"—"a body politic," "with all the functions and powers of government within itself,"—"a moral person who possesses understanding, and is susceptible of obligations and rights," etc.,—"an *organized* body."

These *political bodies* or *bodies politic* are the State Governments. The Government of Georgia is such, made up of her three departments and necessary officers. She has no other political body. This political body acts, expresses its will, and binds itself and the people, by its Legislature; by this department it speaks the presumed will of its constituents by the mouth of its records; if it binds itself for money, or anything else, it does so through this department, and there is no other way by which "*the State's*" will can be known, or by which it can be bound. To have ratified the Constitution by "the State," it should have been done in this, the only way by which, as a "body politic," it could have been done. The Government was to operate on the people individually, and, therefore, they were the proper persons to ratify. And, notwithstanding the frequent declarations of Mr. Stephens that the Constitution was made "by and for the States," we will show that it has not, in the whole administration of the Government for three-quarters of a century, operated on the States of the Union as political bodies. Our business now is to show that it was ratified by the people, and not by the States as political bodies,—by the people *of* each State, and of the United States, for there is no incompatibility in their being both.

When the *people of* the State of Georgia ratified, they did it, not *as the State;* for, in their unorganized condition, they did not represent the body politic, but each voter himself only. They had but one organized condition, and we have shown what it was, and they did not ratify by that. There were not *two* States of Georgia within her geographical boundaries. All the State of Georgia, as a body politic, had to do, and did, by her delegates in convention, was to aid in preparing the Constitution for its submission, for ratification, to the *people*, whom, and whom only, it was to govern. Like an attorney, the convention prepared the deed for execution by the parties interested in its provisions, and it was fitting that they, and they only, whom it was to govern, should sign and deliver. When the people made it (the State), they, at the same time, made the Legislature, as its

mouth-piece, to express their will and bind the body politic. We will illustrate in a way that will be understood by all. A certain number of persons may be organized as a church, and outside of the organization one member will not, nor will all, constitute a church, as if they were assembled and organized as such; all the members, taken individually, as were the votes on ratification, could not by act, written or otherwise, receive or excommunicate a member, or bind "the church" to any contract. So the people, outside of their organization as a State, can do no act—except to reorganize, or make a new State, or to give their votes on a question *by the request and permission* of the State, or body politic already organized as a State,—that will bind it.

An act signed by every voter in a State, in their individual characters, and as they voted for the Constitution, could not repeal the most insignificant statute, confer the most trifling corporate right or charter, or bind the State for a dollar; and how can they, in such characters, perform this most important of all acts as a State,—or for, and instead of, the State Legislature? Sometimes the Legislature asks for the will of the people on a measure, and even then it requires an act of the Legislature to bind "the State."

The sophists, seeing the fact recorded that each State, as "a body politic," had *not* ratified the Constitution,—and which knocked the pillars from under their theory,—set about making the unorganized people of the State "a body politic." We say unorganized, because as an organized body they had not ratified, and there was no other character but that of an unorganized mass in which it could have been done, unless they say—and they have not been so absurd as that yet—there are two States in the geographical boundaries of one. If it had been only a Confederation of States, it would have needed no other ratification except by States; the old Articles of Confederation had no ratification by the people, because they operated on States and not on the people; and if the Constitution had been like the Confederation, as Mr. Stephens contends, it would only have needed that "the States" should have ratified or pledged their faith, by their Legislatures. The Constitution was *formed* by delegates appointed by the Legislatures, and ratified by those elected by the people—the first acting for the body politic, the latter for the people in their individual, primary, and unorganized character, when each man voted for himself only.

Under the Confederation there was but one kind of body politic—the State Governments, operating on the people of

each State. The Constitution of the United States made another—the United States Government—which was another State, whose laws were likewise to operate on them; and when the people ratified the latter, they did it in the same individual and unorganized character in which they ratified State Constitutions.

Suppose the United States Constitution had been made before that of the State of Georgia, it—the Constitution of the former—would have been ratified by the same people, individually, and in the same character, as it has been. It did not vary their character that they were of the State or living in the State of Georgia when the Constitution of the United States was ratified.

Mr. Stephens says the people of the States are citizens of the United States because they are first citizens of the States. We might ask him if the people of the Territories are not citizens of the United States before they are made citizens of a new State. For the present we will not controvert that point, as it has no bearing on this question; for, after having had the consent of the States, by their delegates in Convention, who formed the Constitution, and by their Legislatures, who submitted it for ratification, there was nothing to prevent the people from making another body politic to govern or operate on themselves. We will illustrate by our former comparison. The church may give its members permission to form a temperance society, a bank, a railroad, or any other society or corporation, when any or all of its members may join or make the new organization just as if they had never belonged to the old one. Nothing is more common than for men to be subject to two or more sets of laws,—as in the case of every one living within a town corporation,—and when performing the duties of each organization they speak and act for it as such, while in such performance. So the people of Georgia may act and speak as the people of the State, or of the United States, according as the act or speech pertains to the one or the other. When one votes for Governor or member of the Legislature, he acts as a Georgian; when for President or member of Congress, as a citizen of the United States. When he ratifies a Constitution for the State, he acts as a Georgian; and when for the United States, as a citizen of the United States, notwithstanding he may be in the boundaries of the State.

If the people, when they voted for the ratification of the Constitution, did it as the State, the body politic, then let them be the State for other purposes. In that character,

then, they are the Confederates of whom Mr. Stephens speaks; and as they have never since in that character done anything of which he complains, then, so far from the thirteen States mentioned by Mr. Stephens as having violated the compact, none could have done so. Because the people, in the character in which they vote—in mass in each State or of the United States—have never done any act, executive, judicial, or legislative, and, therefore, could have violated no compact.

Whenever Mr. Stephens, Mr. Calhoun, or other Secession writer speaks of the States,—whether as independent Colonies, or as States under the Confederation or Constitution,—they mean those bodies politic defined by them as above. Mr. Stephens says, at page 59, "Each of these States entering into it [the Confederation] did so as a separate, distinct, sovereign *political* body;" and our argument has been to prove that the vote of the people was not the act of such *political bodies*. It is immaterial, as we will show, whether their votes were given as citizens of the States or of the United States, inasmuch as no one has ever doubted the validity of the ratification by such vote.

It is true that the people, organized by their various departments into a government, are the State; but it is not true that, while having such organization, the will of the body politic can be expressed except through said departments of government. The will of the people—not as a body politic—may be expressed, especially by its consent, by their individual votes. And in this latter way only was the Constitution ratified by the people. If it be possible for the people to express their will not as a body politic, it was then so done.

That it may be so done is admitted by Mr. Stephens at page 144 and other places, as we will show.

It would be a fraud on a society, organized into a State or body politic, to be controlled other than by such organization.

Under the social compact the people are presumed—and, under the representative organizations of this country, are known—to have agreed by their Constitutions, that their wills should be made known, laws made, the State bound to pay money or to make any other compact with States or individuals, by and through the proper and appointed departments of government, and by them only.

When the people organized their body politic, they agreed, by their Constitutions, to be bound by laws made in one way

only; and they can be bound in no other, as a political body, because such was the limit of authority to bind them.

Though it was competent for the States to make the confederation—being a compact between States only—it was not to make another political body or State, to operate directly on the people without their consent. And the States in convention seem to have so understood it, and refrained from such an unauthorized attempt. For the people had—and they only had—the same right to a new political body or State to govern them, to be called the United States, as they had to make the one called the State of Georgia. And hence the States in convention confined themselves to preparing and giving their consent that *the people* by ratification might make the new organization, State, or political body called the United States.

Only the people—where every man speaks for himself only—can make a government or body politic to govern them, as is the Government of the United States, and of the State of Georgia. States only, organized as bodies politic, can make compacts to bind States, as was done under the Articles of Confederation, and is done in all treaties. The people having made a State to govern them—or having one made, ratified expressly or impliedly by them—could not, without its consent, make another incompatible therewith, as is in some respects the Government of the United States. But that consent having been given by the States in convention, the people, as the people only, made by ratification the Government of the United States. And it matters not whether their consent by ratification was given by political or geographical boundaries, if they included all the people to be governed by the new government.

Mr. Stephens seems to think that the Constitution's being ratified by States is manifested by "the very last act of the Convention in giving a finishing touch to the Constitution," because it said, "Done in Convention by the unanimous consent of the States present." What was done by the States in Convention? Nothing more than the preparation of the Constitution for ratification, which latter was "the finishing touch," and by the people.

According to our theory of government, a State or body politic cannot alone make another State or body politic operating on individuals, which is done by a Constitution or "Constitutional compact" of the people to be governed.

On the other hand, the people, as such, cannot make a treaty, league, confederation, or any other compact, except

a social or "Constitutional compact," because the consent of the body politic to be bound could be had through its proper department only.*

We do not allude to any other theory of government than such as has been adopted and recognized in the United States. For we know that almost all — if not all — the governments of the world had their foundations laid by the sword or in some other irregular way. Indeed, the Colonial, and afterwards the Confederate States, had not their origin in the will or consent of the people as certainly as the present acknowledged Constitutional governments have. The object and office of a government is to govern *the people* over which it has jurisdiction, and not to make other governments unless the power be given by the people in their State Constitutions, as is done in all as regards making amendments. It is not pretended that any power was given in the State Constitutions to make the Constitution of the United States.

If the people wish to ordain another government, to govern them in some things incompatible with the existing governments, it is just as fitting that their consent be plainly expressed as in the case of a State Government; and it is abundantly admitted that the United States is a State (see 484): therefore it should have been, and was, made as the State Governments were,—by the people's individual votes.

We presume that the reader sees plainly that, though a State or a body politic may make all other contracts, it cannot make a Constitution or "Constitutional compact." And yet Mr. Stephens says in many places, as at page 137, "it [the Constitution] was so submitted to the States, in their *political organizations*, and by them *as States* it was so agreed to and ratified." (The italics are our own.) Recollecting Mr. Stephens's correct definition of "a State," and seeing he calls it a "political organization," how can he make the above statement, when he admits in other places—as the record compels him to admit—that the *people*, by their individual votes, agreed to and ratified the Constitution?

Nothing is more distinct than the people, individually and unorganized, and a body politic: the former is the creator, and the latter the creature; and those who confound them conceal the truth. It is as inconsistent to say that a legislator and the voter are the same, as to say that the people, unorganized and individually, and the government made by them, are the same; and it is by confounding them as the same, and

---

* The Legislature.

all compacts as the same (as will be shown), that the Government of the United States is made a great "puzzle."

That the States, as political organizations, could not have made the Constitution of the United States, and that the people only could have done it, and *not* as States, but as a body different from States, we will prove by Mr. Stephens himself.

Apparently to muddy the water, he throws in Secession jargon, such as "States jointly" for the Government of the United States, "delegated" for granted, "that set of agents" for the State Governments, and "another set of agents" for the United States Government. We can, however, give them such a rendering as to show their meaning, if they have any.

He makes Professor Norton ask, "Why was not the Constitution referred back to the State Legislatures?"—as *we* ask, if the "Constitutional compact" was the act of *the States*.

Mr. Stephens, at page 144, answers, "For the clearest reason in the world. It was because ultimate, absolute sovereignty resided with the people of each State respectively. The additional sovereign powers, which were proposed to be delegated to the States jointly, under the Constitution" (which, in plain English, means the powers which were proposed to be granted in the Constitution to the United States), "such as the taxing power, and the power to regulate trade, with the right to pass laws acting directly upon the citizens of the sovereign States, etc., could *only be delegated by the people* [italics ours] in their sovereign capacity" (which means, again, that the people only, and not the States, could grant powers, making a Constitution for the United States). "This delegation" (or grant) "could be made *only* [italics ours] by a convention of *the people* for that purpose." (That is what we have said, Mr. Stephens!—*only* by the people, and not by "*the States*" as bodies politic, as defined by you.) "This delegation" (or grant) "could be made only by a convention of the people for that purpose. These powers, by their then existing Constitutions, were vested in their State Legislatures. The Legislatures of the several States, at that time, had the sole power to tax, to regulate trade, etc. These powers had to be resumed" (which could only be done by ratification) "by the people of each State" ("*people of each State*," not *as* a State or body politic) "separately, and taken by them from that set of agents and delegated to another set of agents." (That is,—when turned into language telling plainly what

was done,—the "people"—not the States—had to make a Constitution for a new government, or body politic.)

"*The Legislatures of the States* [italics ours] were not competent to make this delegation [or grant] of additional powers to the United States, because they were acting under delegated [or granted] powers themselves."

Mr. Stephens goes on in stronger language, if possible, to deny the power of "*the States*" to make the "Constitutional compact:"

"They [the Legislatures of the States] were possessed of no power, except such as the people of the States in their sovereign capacity had delegated to them; and amongst those delegated powers with which they were clothed, none had been granted empowering them to make this new delegation of powers to the General Government."

That is, *the States* could not make the United States Government, because "this new delegation of powers" from *the people* made it.

These extracts show not only that "the States" could not make the Constitution, but that "the people of each State" cannot be a State. For they are put in opposition as two different things, as in many other places: thus, "These powers had to be resumed" (which was done, and could only then be done, in the act of ratification) "by the people of each State separately, and taken by them from that set of agents" (the State governments) "and delegated" (granted) "to another set of agents" (the United States). "The *people of each State* separately" are here represented as resuming powers which were in *each State*,—and this in the very crisis or act of ratification. The people are represented as taking from *another* and not themselves,—which is sense; but there is no sense in saying they are taking from themselves,—that the State takes from the State,—which Mr. Stephens should have said, if it be true that the people were acting as a State.* Mr. Stephens would not consider us respectful if accusing him of such nonsense, which can only be avoided by denying what he says in his book, what Mr. Calhoun said in his first resolution, and what Secessiondom have said, now say, and will continue to say, no matter how absurd and how often refuted,—that the Constitution or "Constitutional compact" was ratified by the States. If not ratified by "the States,"—as we think has been proved by Mr. Stephens, as well as by

* We hope the reader recollects that when we speak of the people we mean them individually and unorganized; when organized they become "the State," and can speak only through such organization.

ourselves,—the compact was *not* made by them, and one of his most important premises is false, and his conclusions, of consequence, false also. The allegation is, that the Constitution was ratified by "the States," and the proof is, it was by the people, and that the people could not be "the States," according to Mr. Stephens. And why not have said by the *people* of the States, according to the fact, unless he saw the damaging other fact that would follow,—that the people of the States are also the people of the United States, and which would have overturned his theory that the Constitution was not made by the people of the United States?

For the purposes of sophistry, the secession politicians can assert, roundly, that the States made "the compact" of the Constitution; but when they come to show in detail—as above, by Mr. Stephens—how it was done, there are three distinct and different parties,—the States, from whom power is taken; the people of the States, taking it; and the United States, receiving the power taken.

Mr. Stephens cannot be permitted to evade this argument, by using the words "that set of agents" instead of the State Governments. He was speaking of the "taking power and the power to regulate trade, with the right to pass laws acting directly upon the citizens of the sovereign States," etc.

Who ever, before the misapplication of such words as "agents" and "delegated," by Secessiondom, heard of the people being taxed by "that set of agents," or that the laws enacted were not by the State, but by "this or that set of agents"? Does "that set of agents" grant railroad charters, indorse bonds, and pass laws to punish criminals? If it be not the State that does all these acts of legislation, there is no such thing as a State between the Atlantic and Pacific Oceans. And the same bodies politic that have been doing these acts for so many years are the "set of agents" from whom those delegated powers were resumed, by the people by ratification, of which Mr. Stephens speaks. They are the bodies politic which he has described as States, and which he calls States, until it becomes necessary to his false logic to call them something else. In the very paragraph from which we have been quoting, he uses the word twice in its proper sense. He sets out by saying, "It was because ultimate, absolute sovereignty resided with the people of each State." Why not have said, with the people of each "set of agents"?

"The additional sovereign powers, which were proposed

to be delegated to the States jointly," etc. If each was "that set of agents" separately, they were "those set of agents" collectively. When speaking of the States of the Union, the States "that violated the compact," and wherever the necessities of a bad argument do not require the contrary, he uses the proper term. According to such secession language, he should have called his book "The War between 'that Set of Agents.'"

Mr. Stephens's error is this: he states his proposition thus, "The Constitution is a compact between sovereign *States*." He defines States to be bodies politic, or, in other words, the State Governments. He proves his compact, *he* says, as ratified by *the States*. The proof, however, turns out to be a ratification, not by the States,—his bodies politic,—or State Governments, but by the individual voters of each State, who are the people of the United States, and whom he treats, as above shown, as different from "the States," or "set of agents." As the lawyers say, we demur to the evidence.

Mr. Stephens uses the terms, "the States," in a sense as defined by him, until he comes to the all-important act of ratification, but then changes the definition—to agree with the facts—to mean the *people* of the States. Now, if the people of the States mean "the States" for one purpose, they must for all; and if "States" are defined to be bodies politic in one place, he must stand by that definition in all, for logic admits of no expediency or indulgence.

It seems mere quibbling to say, when the people of the States made the Constitution of the United States,—a new body politic,—just as they made their State Constitutions, it is not a Government, or "Constitutional compact," made by *them*, but by the States. But Mr. Stephens would answer that the Constitution was voted for by the people of each State "separately," not by the people in mass, and that was a ratification by each State.

We hold, however, that voting by States was as much a vote by the people of the United States, as if they had all gone to Philadelphia and deposited their votes in one big box at the Capitol. The first reason for voting by States was because it was the most convenient, if not the only practicable, way of procuring the suffrages of the people, and it was the way practiced by the States. Virginia, in her ratification, well said, "the powers granted under the Constitution were derived from the people of the United States."

If voting by States made the Constitution a compact by

States, then it was a compact by counties, because the people gave their votes at the county polls, in person, first.

When the people voted for the Constitution of the United States, they did it as individually, unofficially, and as little embarrassed or controlled by a body politic as when they voted for the Constitution of the State; and there is just as much authority for saying that in both cases they voted by counties, as there is for saying that in the former they voted by States.

According to Mr. Stephens's theory, if all voters north of the Potomac had voted for the Constitution at one place, and all south at another, it would have been a compact between two instead of thirteen sets of agents.

Mr. Stephens seems to think, because the people's votes were collected by States, *that* made the United States a Confederacy. If a vote were now taken to make a consolidated government, for facility, it would be done by counties and States, as at ratification. So the *manner* of taking the vote does not make the *form* of the government, if done with proper authority; and that is not disputed. Because the votes for President are taken by States, no one denies it to be a national act on that account.

A second reason for taking the votes by States, was because the delegates in Convention, in making the Constitution, did not think—as we do not—that they had the power to impose a new government upon, and make the people citizens of, a new body politic, without their consent in each State; but which they could have done without leave if the United States was a government "of and for States" as under the Confederation, as Mr. Stephens says it is.

The secessionists say, if the Constitution had been ratified by all the people of the United States, voting at Washington or Philadelphia, that would have been a government from which the States could not have seceded, though some of the States might have had a government imposed on the people against the consent of every voter within their limits. All the people south of the Potomac might have voted against the Constitution, and the majority on the other side for it, and against the will of every man and State on the south side, and, according to secession doctrine, there could have been no secession; but because the vote was taken so as to have not only the consent of a majority of the people of the United States, but of every State in the Union, it is no government, but a compact from which any State may secede at pleasure. That is, the people of a State could

have been bound against their consent, but not by their consent. And for such logic have the poor deluded Southern people bled, and, bleeding, died.

Another reason was, that the Constitution provided that it should take the ratification of nine States to establish it, and it was necessary to vote by States to know when that number had ratified. The best reason of all was that the States were complete independent political bodies politic, and could part with none of their sovereignty or powers without their consent as States. That consent was had by their delegates in the Convention which formed the Constitution. Nor could a new government have been imposed on the people of any State without their consent also, and that was had by ratification. And to ascertain these important facts the vote had to be taken by States, and not because the States were making compacts. That had to be determined by what they did make, and not how made.

Whatever may have been before the Convention, the question submitted to the people for "the finishing touch" was, not whether they wished the States to make a new league for the States, but whether they ratified and consented to the Constitution *as written*. As the people could not be assembled to sign the Constitution, or its ratification, in person, their consent had to be taken by collecting their votes by counties and States.

The sophists say the giving of the consent of the people in this way made the Constitution a league "of and for States," but if all the votes had been given at one box at Philadelphia, Washington, or some other central point—without any reference to the States of which the voters were citizens—it would have been an ordained and established government "of and for" the people of the United States.

That is, that the meaning of the Constitution does not depend on its terms, but on the mode of its ratification. That if ratified in the former manner, its meaning is as different from what it would have been if done in the latter way, as light is from darkness.

This plain statement of the true issue is enough for the refutation of the argument of the sophists. Besides, to have required the latter impossible mode of ratification, would have been a total denial to the people of the right to make a National Government; and such obvious and unblushing quibbling is pronounced "unanswerable."

The sophistry of the secessionists consists in controlling the meaning of the Constitution, not by what it says, but

by the manner in which it was made. If made by proper authority—and all admit it was—its terms must control; if not by proper authority, the whole instrument is void.

If the Articles of Confederation—which every one admits was a league or compact between States—had been copied, leaving out those portions which pledge the faith of the States for its execution, and substituting in their place that it "is ordained and established" as a law, operating on individuals—and which is admitted—it would no longer have been a compact or league, but a law, provided a law for the people could have been made without ratification by them.

Suppose the question was before a court whether a paper signed by "A" was a mortgage or an absolute deed, would Mr. Stephens make so ridiculous a point as that the paper is not to be interpreted by its terms, but by the place of execution?

All that was wanted was, to know that the people of each State assented to the Constitution in the terms in which it was written; and if that could have been known by depositing their votes in one box, the Constitution would have been as effectually ratified as it was by the mode adopted, and it would have meant exactly the same thing.

One ratification would have made the Constitution a compact as well as the other, and the vote was taken for no such ridiculous reason as that of the sophists, as we have shown.

No kind of ratification, if by proper authority, could have altered the meaning of the Constitution.

Therefore, whether the ratification was by the States as politically organized, by the people of the States in their unorganized character, or by the people of the United States, its interpretation must be in the Constitution as written, which will be considered in the next and succeeding chapters.

But, before dismissing this chapter, the significance of that part of the preamble to the Constitution which says "we the people of the United States" must be noticed, as it evidently contemplated a union of the *people* of the United States. And since reading Mr. Calhoun's futile effort to explain it away we have more confidence than before in its importance, because if to be answered we know he, of all men, is capable.

Speaking of the preamble, Mr. Calhoun says, at page 360:

"Whatever may be the true meaning of the expression, it is not applicable to the condition of the States as they exist under the Constitution, but as it was under the old Confederation, before its adoption. The Constitution had not yet been adopted, and the States, in ordaining it, could

only speak of themselves in the condition in which they then existed, and not in that in which they would exist under the Constitution.

"So, if the argument of the Senator proves anything, it proves, not (as he supposes) that the Constitution forms the American people into an aggregate mass of individuals, but that such was their political condition before its adoption, under the old Confederation, directly contrary to his argument in the previous part of this discussion."

This admits that under the Confederation the "political condition of the American people" was "an aggregate mass of individuals," etc., and all admit the Confederation was but a league or compact between States; and if that government was an aggregate mass of individuals, much more must the present be, as the preamble declares it was made to form "a more perfect Union."

Another and better reply to Mr. Calhoun is, that the Constitution was made—as we have shown—by delegates, to speak for those who should ratify it,—as a deed or will is made by the writer, to speak for the grantor or testator who may sign.

The Constitution was intended to say, we the people,—whether of the States or United States,—and not we the delegates, who prepared it for their acceptance; for it was theirs, the ratifiers', Constitution as soon as ratified.

Significant as the preamble is, we are not driven, like Mr. Stephens, to rely on such accessories; for the meaning of the Constitution is too plain to need their aid, or to be perverted by their inconsistencies.

If it had said, we the people of each State, instead of "The United States;" had said that it was a government "of and for States," and that it was a Constitution between States, and the rest had remained as it is, the government would not be Federal, nor the Constitution a compact between States, as the States did not pledge each other for its execution; but it purported to be ordained law.

The sensible rule of interpreting Statutes and Constitutions is, to construe them so that the whole may, if possible, stand; and if that cannot be done, exceptions and provisos must give way to the body of the act.

The greater cannot be repealed by the less, nor the principal by the accessory; as, in the trial of an issue, the great body of evidence cannot be set aside on account of a few contradictions or inconsistencies, even if there were such in the Constitution.

We omitted in the proper place to notice what is too important to be overlooked.

The Confederate Constitution recites that "each State acted in its sovereign and independent character," and the Constitution of the United States says, without the above-quoted words, "We the people of the United States" do ordain, etc. The Constitution of the Confederate States required its ratification by Conventions of States only. The Convention forming the Constitution of the United States required its submission for ratification to be "to a Convention of delegates chosen in each State by the *people* thereof," etc. Why this difference, unless the Confederates saw that to make a Confederate Republic it must appear to be done by States as bodies politic only, and not by "the *people* thereof," as was done in ratifying the Constitution?

CHAPTER III.

THE CONSTITUTION IS NOT A COMPACT BETWEEN STATES, BUT A FUNDAMENTAL LAW OF A GOVERNMENT FOR THE PEOPLE OF THE UNITED STATES.

The next of the triple propositions that we shall notice is the one which asserts "that the Constitution is a *compact* between States."

The sophists can but admit that the Constitution is a fundamental law, and to all but a Secession mind it would be sufficient to say that, being a law, it cannot be a compact. Two things entirely different cannot be the same; a promise and a command are not more unlike than laws and compacts. As Blackstone has it, one says, Thou shalt or shalt not; the other, I will and I will not; and Mr. Calhoun says, at page 361, "compacts, not laws, bind between States."

But as this is the main plank in the platform of Secessiondom, and one which the sophists think sounder than truth itself, it cannot be too elaborately discussed or too strongly attacked, though it may, to the logical and unprejudiced mind, appear as ridiculous as bringing up artillery to attack a cob-house. To all but Secession minds, and to them only when arguing in favor of Secession, it is plain that the Constitution is not a compact, but an instrument for enforcing contracts.

If you wish to know what any instrument of importance

is, you will not be satisfied with learning what it is called, with looking at the indorsement on its back, or even with what it may call itself, as we have before shown.

In looking into the Constitution, it will be found to be a grant of powers and a declaration (not an agreement) of fundamental principles that establish *a government* which executes itself in defiance of all opposition not revolutionary. It is not necessary, in making a law, that it should be declared to be a law in every sentence or section; if the thing be written and published by the law-making power as its will, it is the declaration of a law, as is the case with all legislative acts. Now, though the Constitution does not declare, at every section or article, that it ordains this to be law, it does so in the beginning and end, for the whole instrument; for it says, we "ordain and establish this Constitution," not "that we the Confederates," as in the Articles of Confederation, pledge our faith to its execution. It declares what is the law, and not what is agreed between the parties.

Mr. Stephens and Mr. Calhoun admit it to be the fundamental principles of a *government*, though a compact at the same time.

We will turn to the Articles of Confederation, and see how different are their terms from the Constitution. In the preamble it is stated that the delegates, etc., assembled, did "*agree* to certain articles of *Confederation*" (italics our own), and they are everywhere called articles of *Confederation*.

Article 3 of the Confederation says:

"Said States severally enter into a *league of friendship* with each other for their common defense, the security of their liberties, and their mutual and general welfare, *binding themselves to assist each other against all force offered to, or attacks made upon* them, on account of religion, sovereignty, trade, or any other pretense whatever."

It calls itself a "league," which is a contract between States. By the words which we have italicized, it will be perceived that the Confederates relied on the good faith of each other to enforce the various articles, while by the Constitution its enforcement depends on the Government only, without any reference to Confederates.

The 13th and concluding article of the Confederation says:

"*Every State* shall *abide* by the determination of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be *inviolably observed by every State*, and the Union shall be perpetual," etc.

The words we have italicized again show how unlike is a Confederacy to the Constitution, which ordains and declares a law; that commands, and is not an agreement which relies for execution on consent of the Confederates. The same article proceeds to say:

"And we do further solemnly *plight and engage the faith* of our respective constituents, that they shall abide by the determination of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them. And the articles thereof *shall be observed by the States* we respectively represent, and that the Union shall be perpetual." (Italics ours).

The Constitution, so far from being such an agreement or league, depending on such faith, is a fundamental law, which has "granted" and "vested" legislative as well as judiciary and executive powers, to be executed according to declared law, and not as the parties' good faith and agreement may permit.

Mr. Stephens, at pages 114 and 115, asks:

"If the Union, as it existed before, was a compact between sovereign States, as has been most conclusively shown, is there anything upon the face of the proceedings of the Convention, or upon the face of the new Constitution, which shows, either expressly or by implication, that any change of the character of the Union in this respect was either intended, contemplated, or, in fact, effected?"

There could be no greater change than converting an agreement into a law. The change would not have been any greater if, at the end of every Article of the Confederation, there had been inserted the words we have above quoted from it, showing a dependence on the good faith only of the Confederates for its observance, and if it had been added to the commencement or conclusion of every Article of the Constitution, that this is "ordained" and declared to be law. And these latter articles have been for three-quarters of a century in practice, declared and executed as laws against individuals, as the Confederacy was, or intended to be, against States.

Mr. Calhoun had the same idea—if respectful, we would say, crotchet—in his mind as Mr. Stephens, when, in reply to Mr. Webster, he said:

"As a proof, the Senator cited several clauses of the Constitution which provide that no State shall enter into treaties of alliance and Confederation, lay imposts, etc., without the assent of Congress. If he had turned to the Articles of the old Confederation, which he acknowledged to have been a compact, he would have found those very prohibitory Articles of the Constitution were borrowed from that instrument."

Most of the Articles of the Confederation are in substance, and some in words, copied into the Constitution. The difference is, one is a declaration of an agreement, the other of law, which are as wide apart as the world. As an exclamation- or quotation-point will change the entire meaning of a whole sentence, so may it be changed by stating it as a declaration of law, or a stipulation of an agreement. To illustrate, we will take two corresponding clauses from the Articles of Confederation and the Constitution.

The first, from the Confederation, says:

"Full faith and credit shall be given, in each of these States, to the records, acts, and judicial proceedings of the courts and magistrates of every other State."

The Constitution says:

"Full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State."

The reader will notice they are the same in words, with no material variation, and the same in substance, without any variation. If the Confederation and Constitution were both agreements or compacts, they would be executed alike, in practice, under both governments. If Massachusetts had refused, under the Confederation, to recognize the records or judicial proceedings of Georgia, the latter would have called on the former *State Government* to repeal or alter the law violating the compact to recognize them. If the Constitution be a law, as construed in practice for nearly a century, its violation would have been remedied by appeal to the United States *Courts;* or, if there be no law to carry out this provision of the Constitution, Congress is bound by oath to pass one. Here is a provision the same in each. Mr. Calhoun would say, because they are the same in words they are both compacts. We say they make but an agreement under the Articles of Confederation, because therein they are said to be parts of a "league" and Articles of Confederation, because *the States* simply bound themselves in good faith to observe them, and, above all, because they could, under the Confederation, be carried out in practice, as an agreement, only by appealing to the State Government of Massachusetts. Under the Constitution the same words make a law, because they are ordained and declared as law; because that instrument provides for their execution or administration as laws. An agreement is not "ordained and established," as in the Constitution, nor were such words ever used for such a purpose.

But made, if States, by "severally entering into a league;" by "binding themselves;" by promising that "every State shall abide," etc., and that it shall be "observed by each State" (not each individual) as in the Articles of Confederation.

In the article quoted by Mr. Calhoun, the States, under the Confederation, mutually contracted and pledged the faith of their constituents that such imposts should not be levied by a State. Under the Constitution there was no such pledge, but a law ordaining that they should not levy them. If done under the former, the *State* would have been looked to to repeal the law levying them; under the latter, the United States courts would be looked to to give judgment against the *individual* levying the imposts under State or any other authority than the United States.

If the Constitution of the United States be a compact, then nearly all, if not all, the State Constitutions are such too, as most of them have been formed on it as a model. The Georgia Constitution is almost a copy of it. Article 1, Section 1 of the United States Constitution says, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Article 1, Section 2 of the Georgia Constitution says, "The legislative power shall be vested in two separate and distinct branches, to wit: a Senate and House of Representatives, to be styled the General Assembly."

They both go on to describe how the members shall be elected; their qualifications; how the two Houses shall be organized; how impeachments shall be conducted; how they shall be protected in the freedom of debate; how they shall adjourn; what powers they shall have, etc. etc. They then go on and run a similar parallel as to the Executives and Judiciaries of each; varying in such matters as are not common to each. So, if the Constitution of the United States be a compact, those of the States are also: though in the latter there are no parties to contract but Tom, Dick, and Harry, who voted for the State Constitutions. For, if those who voted for the Constitution of the United States are made confederates by that act, there can be no reason why the same result should not follow as to those who voted for the State Constitution. They are all social compacts, as civilians call them, or "Constitutional compacts," according to Mr. Calhoun, it matters not which; and the commanding and important feature of both is that they operate on the people alike—as laws.

The Constitution of Georgia of 1798, under which Mr. Stephens lived nearly all his life, does not even say it is "ordained and established." It says—as does the Constitution of the United States—that the Legislative, Executive, and Judiciary powers "shall be vested."

The Constitution of Georgia under which he now lives, in its beginning, is copied from that of the United States, saying:

"We, the people of Georgia, in order to form a permanent government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking the guidance of Almighty God, the author of all good government, do ordain and establish this Constitution for the State of Georgia."

Now, if the last declaration in one State Constitution is the same as that of the United States, and the former, without any at all, make the Constitutions of Georgia fundamental laws, and not compacts between those ratifying, will Mr. Stephens, or any of the sophists, tell us why the United States Constitution should not be so too?

Mr. Stephens has scattered all through his book a pet idea, expressed in such terms as "it [the Constitution] is a government by States and for States,"—"it is a government of and for States."

It has been shown that it is not a government of or by States, and it will now be shown it is not one "for States;" and, in doing this, we will show that the Constitution cannot be a compact, other than a social compact of the people, which Mr. Calhoun denies by his resolutions of 1833.

When one independent nation does another an injury,—which is usually, if not always, by the citizens of one doing some wrong to those of the other,—the offended State appeals to the offending sovereign for redress, and not to the offending individual. If Massachusetts should pass a law making it unlawful to take a fugitive from service from her jurisdiction and deliver him to his master in Georgia,—as is provided by the fourth Article of the Constitution,—then, if the Constitution were simply a compact between sovereigns, as Mr. Stephens contends, Georgia's only redress for her citizen would be to call on Massachusetts to repeal the obnoxious law, or not to enforce it against Georgians. But, under the Constitution as a fundamental law, it is the duty of Congress to pass appropriate laws for the recovery of the fugitive, as was done in 1850, and, if not effectual, to amend them until efficient, as was also done in 1850; and not, as in the case of independent nations, could Georgia, or the United

States, go to war in form with Massachusetts, to make her repeal the law or surrender the fugitive. If resistance be made, the *individual* making it, and not the State of Massachusetts, is punished. And sections are provided in the above law for punishing those who may obstruct its execution.

When the treaties of nations are enforced between them by war, it is against the whole people of the offending State, the innocent as well as guilty; when laws are executed by a State, it is by punishing the offending individual only; but, according to the theory of Mr. Calhoun and Mr. Stephens, if, in the latter case, the offense of the individual be committed by authority of an unconstitutional law of another State, all the people of such State may suffer in enforcing the treaty by war.

Mr. Calhoun says, "compacts, not laws, bind between States." If that be true, as it is, and the Constitution be a compact between States, then, in *all* cases, appeals should be made *by* States or *United States to States* for the assertion of constitutional rights, and not by individuals to law, because "laws" *do not* "bind between States."

But suppose the United States should fail to have the slave surrendered, as she did, more than once, fail to execute the law in Georgia. What then? Why, the case would be presented for Mr. Stephens to assert his "mode and measure of redress,—not by secession, but revolution against a government too weak or wicked to enforce its laws."

If the Constitution be but a treaty, articles of confederation, or a league between sovereigns, then Georgia would have a right to appeal to the "*ultima ratio*," or submit to the wrong, as Massachusetts did when Georgia stood—as we will show—in defiance of the laws of the United States. But if the Constitution and laws of the United States be a *government* or social compact, the citizens of Georgia, in the case supposed, would be like many are who hold notes in that State, the considerations of which are slaves,—and, indeed, as many are in regard to other contracts made in the same State. For, in the case of the notes, which were founded on considerations as valuable as gold, Georgia has denied all jurisdiction to her courts, and the creditor has the same complaint against his State that the slaveholder would have had against the United States in the case put above. The complaint and the "mode and measure" in both cases would be the same,—revolution or submission.

Massachusetts never obliged herself to surrender fugitive slaves, nor Georgia to observe treaties, as independent sover-

eigns do, by treaty, in like cases, but the people of both—or the States, if you choose, and which, for the sake of argument, will be admitted at the proper time—ordained a Constitution on which to construct a new body politic, two of the fundamental principles of which were the surrender of slaves, in the case supposed, and the observance of treaties as the supreme law of the land; and the voters for that Constitution stood in the same relation to the United States, for furnishing redress in both cases, as the holder of a note does to Georgia.

The Constitution has been in operation for three-quarters of a century, and we are not aware of a case in which the law has been put in force against a State. It was attempted against Georgia soon after the Constitution was made, but was abandoned, and that State had her own way, as she always has had—as we will abundantly show in the proper place—until her late abortive attempt at the "mode and measure of redress." Neither are we aware that one State, or the United States, has, as a sovereign, demanded of another State, as a sovereign, redress. We know many threats have been made for political effect in innumerable cases, but nothing—prior to the late "mode and measure"—in diplomatic form as a preliminary step to an appeal to arms; much less has any hostile *action* been had in that way. Indeed, the whole theory of government forbids; for the leading, if not the only, object of the Constitution was to avoid such consequences, the want of power to prevent which was the main objection to the Articles of Confederation. And so Mr. Stephens thinks, at page 480, where, speaking of the present Government when about to be formed, he says:

"The great object was to obviate the difficulties and the evils so often arising in all former Federal Republics, of resorting to force against separate members when derelict in the discharge of their obligations under the terms and covenants of their union."

What does Mr. Stephens mean by this, if he does not mean to say that in all former Federal Republics they had to be governed, and by force, if necessary, and under the new Republic, about to be formed under the Constitution, it was intended to avoid governing the States or Republics, because, when derelict in the discharge of their duties, force had to be used? The framers of the Constitution did not wish to govern the States, because force had to be used; and if not governed, how "a government of and for States"?

He proceeds with more of the same sort. "Difficulties of

this sort had already been felt under their own Confederation, which they were convened to remedy." That is, difficulties of governing the States under the Confederation, because the Confederation was a government of States, and, to avoid that, it was intended no longer to have such a government, but one of the people, because that was the only way to avoid governing States; and if a government of the people, and not of States, it was no longer Federal.

"By the law of nations," Mr. Stephens proceeds to say:

"The confederates of States thus derelict had the clear right to compel a fulfillment of their solemn obligations, though the very act of doing it would necessarily have put an end to the Confederation. The question of coercion in the collection of unpaid requisitions, on the part of some of the States, had been raised during the old Confederation. Jefferson saw that this would be necessary if that system could not be amended."

(And, in amending that system of collecting requisitions, they had to destroy, and did destroy, the Confederation or the government "of States.")

. . . . . "This newly-born idea presented an easy solution of the whole vexed question. It was adopted by the parties agreeing in the compact itself that in the collection of the taxes for the common defense and general welfare, and in some other cases, this common agent of all the members of the Confederacy [the Government of the United States] should act directly upon the individual citizens of each, within the sphere of its specific and limited powers, and with a complete machinery of functions [why not say government?] for this purpose similar to their own. This is the whole of it."

And enough to show that it is no longer a "government of and for States." For how "of States," if, instead of acting on or governing *them*, the "functions" were to operate on and govern "directly the individual citizens of each" State, in a way "similar to their own"?—that is, govern the citizens of the States as the States governed them? And a State by itself is no Federal or Confederate Government.

We have just noticed a provision in the Constitution where a State had to *do* something,—deliver up a fugitive slave; and we have seen there was no execution of law, nor forced compliance with an agreement by *a State*.

We will now notice some of those sections in which States are *prohibited from doing* certain acts, and we will take up what so frequently has been practically acted on,—the clause that prohibits any State from passing any "*ex post facto* law, or law impairing the obligation of contracts." Now, if the Constitution was "a government for States," a treaty, league, or confederation, the course would be for the United States

or a complaining State to demand of its offending sovereign and independent neighbor the repeal of the obnoxious law, and restitution to any citizen who may have suffered from this "violation of the compact." If the law should remain unrepealed, or restitution continue to be refused, the aggrieved parties would have to organize armies and resort to the "mode and measure of redress" by arms.

The reader must perceive, if the Constitution were a league or compact, like the Articles of Confederation, this must necessarily have been the practice under the Constitution for the three-quarters of a century that it has been in operation. But, being a law, ordained and enforced as a fundamental principle, whenever it has been violated by a law of a State Legislature, the United States courts pronounced it void, just as State courts do any State law violative of their own Constitutions,—showing they both stand on the same footing as regards their operation on the people who ratified them.

After this exposition, how can Mr. Stephens say the Constitution is a government for States,—and, that there may be no mistake, he says, "not for the *people*, in any sense, but for States as political societies,"—when the whole practice under the Constitution, during its existence of nearly a century, has been all the while on the people, and not once on a State as a *political* body?* If the Constitution be a *government*, as he admits, of and for States, how happens it never to have governed one, and that, to evade being governed, any State can depart at pleasure and absolve herself, as well as her citizens, from all obligation to the laws? We do not understand how there can be a government which does not and cannot govern its objects of government. This idea is so absurd and contradictory to fact that we have thought we might be mistaken as to Mr. Stephens's meaning. If he had only said it was a government *by* States, there would have been no doubt as to his meaning; but when he says, in the same sentence, as if in contradistinction, "*for States*," it is to be presumed he means a government that operates *on* States. If he does not mean that, then there is no obligation of any kind on the States; for he admits, at pages 480 and 481, that the Constitution was made to avoid a right under the Confederation to coerce a State. Now, if the States cannot be coerced for

* We speak of the Constitution, not as lately amended, nor do we of conquered States, but as it was when Mr. Stephens wrote the volume we review.

violating an agreement or league, as under the Confederation, nor for violating a law under the Constitution, how can there be any compact? For there can be no compact without a sanction, without any obligation to be bound in any way. A compact between States, like a contract between individuals, must have a consideration; and if there be no mutual obligation to be bound, either by agreement or law, there can be no compact.

When Mr. Stephens says it is a government by States, we suppose he means a government by "the United States." If, because the States ratified the Constitution,—as he and the sophists hold,—that makes it a government "by States," we understand him. He cannot, so contrary to the fact, mean that it is carried on and conducted by the States. For, if every Legislature were to concur, they could not elect a President, or a Representative to Congress, appoint the most inferior officers, or repeal the most insignificant act of Congress. The only participation they have in the government is the appointing of Senators; but the Senate neither makes nor controls the government, though it may arrest the making of *new* laws. Representatives are apportioned by States for convenience, as by counties in the State governments; but still they are the representatives of the people of the districts electing them.

If the election of Senators by States makes a government by States, by a parity of reasoning the election of Representatives by districts would make a government by districts. Indeed, such a course of reasoning would make the State Governments governments by counties; for their Legislatures in both branches represent counties.

Mr. Stephens, at pages 127–8, asks:

> "Is it not entirely proper and correct, therefore, to say of a government that cannot be carried on rightfully at all against the will of a majority of the States, that it is a government of States, and nothing but a government of States?"

The same question could be put as confidently of the *people* represented in the House. And more confidently might it be said that, inasmuch as the government of a State would be arrested if the Senatorial branch of the Legislature—represented by districts—did not assemble, it is therefore a government of districts.

This argument, reduced to a proposition, may be stated thus: that a power which can destroy or arrest the operation of government determines its character. So if it could

happen that no citizen having the qualifications required by a State Constitution could be had to accept the office of Governor, therefore such a State would be a government of Governors.

Mr. Stephens admits that the representation in the Senate was a matter of compromise. And if it has any significance more than that, it is, that it was given to the States as compensation for a surrender of sovereignty; and secondly, that they did not believe in secession as taught by Mr. Stephens, for that right would have been ample protection to them without any Senatorial veto.

So far from Senatorial representation being evidence of a government of independent sovereign States, it is proof that it was taken in consideration of an abandonment of a government of that character.

We have said in another place that if the people had intended to make a government of and for the *people* of the United States, we know of no other way in which their votes could have been given but by States, as was done. So, if a government instead of a compact had been intended, we know not in what better language it could have been put, to express that intention, than we find in the Constitution. And, of all others, the secessionists are the last who should say it was not in apt language to express that intention. For it is in such as they used to "ordain" secession and secession laws for the people of the States. The Georgia Secession Convention "ordained and declared" all its fundamental laws, as the United States Constitution was "ordained and established." And if they be apt words to make a Constitution and not a compact for the people of Georgia, why not for the people of the United States?

Mr. Stephens was a leading member of the Georgia Secession Convention which, among other things, made a Constitution for Georgia, the preamble to which is as follows:

"We, the people of the State of Georgia, in order to form a permanent government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity, acknowledging and invoking the guidance of Almighty God, the author of all good government, do ordain and establish this Constitution for the State of Georgia."

The reader will notice that it was copied from the Constitution of the United States, substituting the people of Georgia for those of the United States. And if the words "ordain and establish" make the one a fundamental law—and not a compact between the ratifiers—for the one and

not the other, it will puzzle even the sophists to show so much as an apparent reason for it.

It has been shown that the Constitution is a law—a fundamental law—by its plain terms, to be judged of by its reading, by comparison with the terms of the Articles of Confederation, which is admitted to have been a league or compact between States, and because, in practice, ever since its adoption, it has always and in all cases been executed as a law on individuals, and never as a compact between States; and because of its similarity to State Constitutions, which no one pretends are Confederate or Federal compacts.

That the manner in which the secessionists have first made this fundamental law a compact, and not a confederate compact or league, between independent sovereign States, is an instance of the most subtle sophistry, will now be shown.

Civilians tell us that government is *presumed* to have been founded on a compact; we say presumed, because they admit the presumption and fact could hardly ever have agreed, and they say though "this is what is meant by the original contract of society," or the social compact, yet "perhaps in no instance has it ever been formally expressed at the first institution of a State." The better presumption is that the first governments were patriarchal, as described in the Bible, and that the next, and nearly all, were established by the sword.

Presumptions, however,—and more especially those so improbable as the social compact,—are never adopted against a patent fact; for, when any fact can be shown by positive, especially written, evidence, there can be no pretext for resorting to presumptions. This is law, and such common sense that all minds will assent to it. Here is the Constitution of the United States, written in good, plain, modern English, and here is the practice, under it, of nearly a hundred years, showing by such practice that it is neither a government "by" nor "for States." Then who but a secessionist would be peeping into the uncertain twilight of ages for the interpretation of the Constitution, when its meaning lies before him in black and white?

The ingenuity—not to say audacity—of the sophists consists in converting this law, established for nearly a century, first into a compact, league, or confederacy between States.

As Mr. Calhoun was the leader and ablest expounder of their doctrine, and has left, in his great speech, copied and approved by Mr. Stephens, the most powerful defense of it

to be found, or that will ever be found, we will take up that speech and show how the metamorphosis is effected.

Mr. Webster had said, "it"—the Constitution—"is founded on a compact, but not a compact. It is the result of a compact." Mr. Calhoun, having noted down this declaration, made it the text of a part of his "unanswerable speech," and said:

> "To what are we to attribute this confusion of words? The Senator has a mind of high order, and perfectly trained to the most exact use of language. No man knows better the precise import of the words he uses. . . . . He thinks there is an incompatibility between Constitution and compact. To prove this, he adduces the words 'ordain and establish,' contained in the preamble of the Constitution. I confess I am not capable of perceiving in what manner these words are incompatible with the idea that the Constitution is a compact. The Senator will admit a single State may ordain a Constitution; and where is the difficulty, where the incompatibility, of two States concurring in ordaining and establishing a Constitution? As between the States themselves, the instrument would be a compact; but, with reference to the government and those on whom it operates, it would be ordained and established by the joint authority of two, instead of the single authority of one."

Mr. Webster was right when he said the Constitution was "founded on a compact, but not a compact," and was "the result of a compact." For when the States met by their delegates to form the Constitution,—for it was formed by them, though ratified by *the people*,—every resolution offered was a proposal or stipulation tendered, and received or rejected by the other parties by vote. The representation in the Senate was done by compact or agreement between the States by their delegates, manifested by their votes. So it was a compact when the delegates agreed that a ratification of the conventions of nine States should be sufficient to establish the Constitution. And it continued a compact until ratified; for in the interval any State could have seceded, or withdrawn its consent that it should be established as a Constitution by ratification. The moment it was ratified by the people it became a Constitution or law, and not before, and could not be altered, except as it provides; and secession is an alteration, as we will show more fully in another place.

Let us illustrate by contracts; and compacts are contracts between States—between individuals. A agrees to sell B land,—may give a bond for titles; it rests in contract or compact, and if A refuses to make title, B can only go to law to enforce it, for the land is not his while his right rests on contract, but so soon as the deed is made the land is his; the grant is made, and cannot be revoked. So as to personal

property. A may agree to sell B his cotton crop, but so long as B's right consists only in contract, the cotton is not his, nor could he maintain trover for it until A does sell. So, until ratification, the Constitution was but a compact between the States, and if any State had seceded it might have been a cause of war, there being no tribunal to enforce contracts between independent States; but the moment the people ratified it the Constitution became a grant of powers to establish a government, that could be no more revoked than a grant from A to B of land. It has been shown how, according to the sophists, the ratification was the execution of the deed, "the finishing touch," in the language of Mr. Stephens. So the Constitution, from the time it was made in convention by the delegates of the States to that of ratification, was a compact between States, as bodies politic, and it was founded on agreements they had made in convention. And if a compact, it was executed as soon as ratified.

But the other day Florida and Alabama gave us a good illustration of what we are now considering, as related by the following from a paper. To make the illustration more complete, the reader will consider the commissioners as in the place of the delegates that fashioned the Constitution:

"*The Rectification of State Lines.—The Annexation of a Part of West Florida to Alabama.*—There is a fraction of the State of Florida west of the Appalachicola River, covering a portion of the area watered by the Chattahoochee just before it changes its name, which juts between Alabama and the Gulf of Mexico. This territory has been, for some two years past, the subject of negotiation—Florida to cede and Alabama to acquire—between commissioners of the two States interested. We learn from the Montgomery *Advertiser* that the commissioners have at length arrived at an agreement. That portion of Florida west of the Appalachicola is to be sold to the State of Alabama for the sum of one million of dollars, payable in the bonds of that State; the bonds to be delivered when the acts of the commissioners are ratified. This ratification depends, first, according to the terms of the treaty, upon the Legislatures of Florida and Alabama; second, upon the vote of the people of West Florida; and, last, upon the approval of the Congress of the United States. These are the main features of the treaty. If this treaty is ratified according to the terms prescribed, the boundary-line of the State of Alabama will follow the course of the Chattahoochee and Appalachicola to the Gulf of Mexico."

Now, that portion of Florida proposed to be ceded to Alabama is in the predicament the Constitution was in before ratification. Florida or Alabama could either, before ratification as prescribed, secede from the contract. And if sovereign and independent States, as the old thirteen were in 1787, without any common arbiter, it would be good cause of war. But so soon as ratified, according to the terms of

the treaty or compact, the territory will become a *grant* to the State of Alabama, and, like all other grants, irrevocable, unless on conditions expressed, as was the Constitution when ratified. It will no longer be a treaty or compact between those States, but a law of both. Florida courts, by law, will take no jurisdiction over the ceded soil, and it will be the law of Alabama that all crimes committed there will be punished by and according to her law; and so of all other legal questions thereto appertaining. So Mr. Webster was right, notwithstanding the ridicule of Mr. Calhoun, when he said the Constitution was "founded on compact, but no compact;" for after ratification, and not before, it was law, and fundamental law, and was founded on a compact made by sovereign States in convention.

Mr. Calhoun proceeds in his reply to Mr. Webster thus:

"He defines a Constitution to be a fundamental law, which organizes the Government, and points out the mode of its action. My objection is not to the definition, but to the attempt to prove that the fundamental laws of a State cannot be a compact, as the Senator seems to suppose. I hold the reverse to be the case, and that, according to the most approved writers on the subject of Governments, these very fundamental laws which are now stated not only not to be compacts, but inconsistent with the very idea of compacts, are held invariably to be compacts, and in that character are distinguished from the ordinary laws of the country. I will cite a single authority which is full and explicit on this point, from a writer of the highest repute. Burlamaqui says, vol. ii. part I. Chapter 1, sections 35, 36, 37, 38, 'It entirely depends on a free people to invest the sovereign whom they place over their heads with an authority either absolute, or limited by certain laws. These regulations, by which the supreme authority is kept within bounds, are called the *fundamental laws of the State*. The fundamental laws of a State, taken in their full extent, are not only the decrees by which the entire body of the nation determine the form of government, and the manner of succeeding to the Crown, but are likewise covenants between the people and the person on whom they confer the sovereignty which regulates the manner of governing, and by which the supreme authority is limited.'"

The first remark we have to make on the above is, that the writer is speaking of the social compact, and the *supposed* covenant is the presumed myth that never existed in practice. Secondly, he is speaking of the relation between a sovereign and his people, and not of leagues and confederacies between several independent sovereigns. Thirdly, if any such supposed compact—and it never was anything but a supposition—was to take place between sovereign and people, after it is adopted as a fundamental law, it no longer rests on compact, though it may have been founded on compact, and will be enforced as law against the consent of the parties. They cannot say to the judges, "I will or will not;" but the law will say, "You shall or shall not."

To apply this *presumption* of the social compact to the Constitution of the United States, only means (and indeed it says as much) that the Government is *founded* on a compact, as Mr. Webster said that of the United States is; but when the compact was ended and the Government adopted and put in operation—as ours was by ratification of the people, or States if you choose—it was no longer a contract, but a *grant* of governing powers to the sovereign. Mr. Calhoun's application was, that it continued a compact between sovereign and people, to be dissolved at the pleasure of the contracting parties. Does any civilian say *that?* If not, it is no authority for saying the Constitution, founded on compact, continues to be such. But, as before said, such fictions have no application to written compacts or constitutions. Indeed, Mr. Calhoun denies, in the third of his celebrated resolutions,—

"That the people of these United States, taken collectively as individuals, are now or ever have been united on the principle of the social compact," etc.

And, of course, such a compact was not applicable, and should not have been cited. For the point in controversy was, whether the Constitution was a compact *between States*, or a social compact between *the people of the United States*, Mr. Calhoun holding the former, and Mr. Webster the latter; and if the authority proves anything, it is in favor of Mr. Webster's position.

Though civilians have used the fiction of the social compact for single States, none *before* the sophists have had the boldness to suppose such a fiction a foundation for a compact between sovereigns. They are always written treaties or leagues. Much less has any one ever before called in a fiction to interpret a written instrument.

There lay a printed Constitution before the two great debaters; one says it is a law, the other, a compact; and to prove it a compact the latter says governments of *single* States are founded on the fiction of the social compact, therefore that instrument is a compact. Was there ever a more ridiculous *non sequitur?* And yet such nonsense is said to be, nay, written down in solemn history as, "unanswerable."

Mr. Calhoun denies in his third resolution, just quoted, that the people of the United States are united on the principle of the social compact, and then quotes that principle—applicable to a *single* State—to prove the Constitution a compact between States. He applies what he admits to be inapplicable.

Magna Charta is given by this writer—as quoted by Mr

Calhoun—as an instance of a fundamental law being a compact, and the strongest instance that can be given on his side of the argument. Though it is put in the form of a compact, it is in practice nothing but a law; the parties cannot secede from it, as in the case of compacts between sovereigns. If the king or people violate it, the other party cannot say it shall not be enforced against him or them because of such violation by the other, but the courts will enforce it in spite of any such secession doctrine. If the social compact is presumed to be such a covenant in theory, it is in theory only, for it has never, except for a short time, in reality been considered as such in practice; and even Magna Charta, which is, in form, a compact, signed by the king and barons, has never been so in practice, for it is, where applicable, as much a law as any statute of the realm, and enforced against king and baron like any other law; and any one in the kingdom proposing to treat it as Mr. Calhoun's "Constitutional compact" would be laughed at; and, though law, it was plainly "founded on compact."

Than Magna Charta, we can think of no incident in history more illustrative of our position that the Constitution, though founded on compact, is no compact; for King John and the barons at Runnymede, in their feudal powers, were not for this purpose much unlike in their relations to those of the States and the United States. For though Magna Charta may have been a compact in the beginning, in the course of time many of its provisions—the right of trial by one's peers, for instance—became "established" law; the main difference between it and the Constitution, in this particular, being that it took time to "ordain the former as established" law, whereas the latter became "ordained and established" as soon as the Constitution was ratified. They both, however, were "founded on compact, though no compact" at the time of the great debate.

Gratiano could not more heartily have thanked the Jew for the exclamation, "A Daniel come to judgment!" than we do Mr. Calhoun for reminding us of this scrap of English history.

Mr. Calhoun quotes from the same volume this:

"The whole body politic of the nation, in whom the supreme power originally resides, may regulate the government by a fundamental law, in such manner as to commit the exercise of the different parts of the supreme power to different persons or bodies, who may act independently of each other in regard to the rights committed to them; but still subordinate to the laws from which those rights are derived.

"And these fundamental laws are real covenants, or what the civilians call *pacta conventa*, between the different orders of the Republic, by which they stipulate that each shall have a particular part of the sovereignty, and that this shall establish the particular form of government."

That is, to apply it to our case, the Constitution of the United States has divided the government off into executive, legislative, and judicial departments; so have all the States. And because this writer has said, the fundamental law, dividing off the duties of the different departments,—such as the executive, judicial, and legislative,—"are real covenants, or what the civilians call *pacta conventa*, between different orders of the [same] Republic," it is authority for saying the Constitution is a compact between *different* States or Republics; and such nonsense—with due respect for Mr. Stephens and the memory of Mr. Calhoun—is called "unanswerable." Why should they be so applied, when Mr. Stephens tells us so emphatically, as has been shown, that there never was any government before like that of the United States?

"But," says Mr. Calhoun, "we have a more decisive proof that the Constitution of England is a compact, in the resolution of the Lords and Commons in 1668, which declared, 'King James the Second, having endeavored to subvert the Constitution of the Kingdom by breaking the original contract between the King and people, and having, by the advice of Jesuits and other wicked persons, violated the fundamental law and withdrawn himself out of the kingdom, hath abdicated the government, and that the Throne is thereby become vacant.'"

Mr. Calhoun thanked Mr. Webster for an admission, and we thank *him* for his quotation, for it proves that this theory of covenants between people and sovereign is as sheer a fiction as John Doe and Richard Roe. If there be any reality in such a compact or covenant, show it! King James lived at a time when history recorded everything, and could not have overlooked such an important covenant; surely such an important document as the said "original contract" cannot have been overlooked. If lost or destroyed, surely some secondary evidence can be found of such an important paper. If by "compact" the Parliament meant, as it no doubt did, the aforesaid empty fiction, it has been answered. James "violated the fundamental law," and seceded, when, according to "the mode and measure of redress," *the people* should have seceded, because of the violation by him, the other contracting party. If it proves anything, it is that the Constitution was violated by secession. After all, it is but the opinion of Lords and Commons of a compact between

sovereign and people; and we have announced that we let the Constitution construe itself.

We are eminently a practical people, Mr. Stephens, and do not regulate our rights and conduct by myths and fictions.

If we cannot find out, by the plain reading of the Constitution and the practice under it for nearly a hundred years, whether it be a law or a compact, we know we shall not by resorting to fictions and such authority as the above.

Mr. Calhoun then opened, as secessionists only can open on common sense, on Mr. Webster, in a triumphant strain, because New Hampshire, his native State, and Massachusetts, his adopted State, had called the Constitution a compact. Both ratifications are admitted to be the same, and we find that on this subject the Convention of Massachusetts acknowledged, "with grateful hearts, the goodness of the Supreme Being of the Universe, in affording *the people of the United States*, in the course of his providence, an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact *with each other*, by assenting to and ratifying a new Constitution," etc.

The ratification of Massachusetts calls it a compact, and by the words we have italicized it will be noticed it says the *people of the United States* entered into a "compact with *each other*," and not that the States separately entered into it with each other; which destroys one of Mr. Calhoun's main premises. For the purposes of argument, we are willing to adopt the fiction of the social compact, and admit there was such a compact between the *people* of the United States, as Massachusetts and New Hampshire declared.

The ratification of Massachusetts shows the propriety of what we proposed in the beginning, which was to discard what others had said or thought; for it is to be presumed that we, who have had our attention directed to the questions, and have the Constitution, and, what is of more consequence, the long practice under it, before us, can judge as well as those who saw nothing of its workings, nor had their attention directed to the points now in issue. Why was the framer of that resolution wiser than Mr. Calhoun, or those who voted for it more capable of judging of the meaning of the words of the Constitution than Mr. Stephens or ourselves? Such resolutions and opinions are worth nothing beyond the arguments on which they are founded; and, therefore, though the ratifications of those two States are much more against the theory of Mr. Calhoun and Mr. Stephens than our own, they may pass for what they are

worth, and no more; for they cannot make that a compact which is not one.

Mr. Calhoun then goes on to show that, in response to the celebrated resolutions of Virginia on the alien and sedition laws, various States called the Constitution a compact. We have the same remark to make to such authority that we have just made to the ratifications of New Hampshire and Massachusetts, with the further objection, that the interpretation of the Constitution on this subject was then a political question, and it is presumed no one will take as authority what politicians say, further than they may be supported by reason. If Mr. Jefferson had not wished to beat the elder Adams for the Presidency, we never would have been troubled with the doctrine, nor with the practice, of nullification or secession.

Mr. Calhoun, proceeding in his "unanswerable speech," said:

"I turn now to consider the other and apparently contradictory aspect in which the Senator presented this part of his subject. I mean that in which he states the government is founded on compact, but is no longer a compact. I have already remarked, no other interpretation could be given to this assertion, except that the Constitution was once a Constitution but is no longer so. There was a vagueness and indistinctness in this part of the Senator's argument, which left me altogether uncertain as to its real meaning. If he meant, as I presume he did, that the compact is an executed and not an executory one, that its object was to create a government and vest it with proper authority, and that having executed this office it had performed its functions and with it had ceased to exist, then we have the extraordinary avowal that the Constitution is a dead letter,—that it had ceased to have any binding effect, or any practical influence or operation."

He occupies a whole page in such secession style, as if the sophists were the only interpreters of the "covenants," and the priests having charge of the ark in which they are deposited.

Mr. Calhoun, in the above, misinterprets—possibly unintentionally—what we presume was the meaning of Mr. Webster, and which we think is correct, and plainly stated; for the Constitution was a compact from the time it was fashioned by the delegates of the States, until ratified by the people, as above explained, and was no compact afterwards, but a law. And it was during the same time an executory contract only, and an executed one as soon as the Constitution was ratified.

The case we have just put of the land sale, was an executory contract until the deed was executed, and then it was an executed contract; the same of the cotton sold; and the same of the territory ceded by Florida to Alabama, as it is

now an executory contract, and will so continue until the prescribed ratification, when it will be executed, and the land will then, and not till then, belong to Alabama. Instead of being dead, as Mr. Calhoun pretends, the grant will but then have life, as the Constitution did from the time of ratification; and it is hard to believe that Mr. Calhoun did not so understand Mr. Webster. Chief Justice Marshall, in the case of Fletcher & Peck, took the distinction between an executory and an executed contract that Mr. Webster did, and held that a grant was an executed contract, as the grant of powers in the Constitution was, as soon as ratified by the people, and not before.

We think now it appears—notwithstanding Mr. Calhoun's unanswerable speech and inapplicable authorities—that the Constitution of the United States is a fundamental law, and a law only.

Suppose, however, the reader is not satisfied, but that it is a social compact, or "a Constitutional compact," and that it is falling fatally short of what the sophists hold, to wit, that it is "a compact between independent sovereign States." For if only a social compact, there can be no secession, as it is admitted *that* can take place only in compacts between sovereigns.

Suppose, further, the reader is not convinced but that the Constitution was ratified by the States, notwithstanding the proof to the contrary, and that it is a government *by* and *for* States; then we come to a point about which there is no dispute, to wit, that the Constitution, whether a compact or not, and whether ratified by "the States" or the people of the United States, is also a law,—a fundamental law,—on which a government has been built and in operation for nearly a hundred years. If these facts were true, as contended by the sophists, it would not be simply a "Constitution," as it calls itself, nor a simple Confederate Republic, as it is called by them, but a Confederated Republic, encumbered, clogged, or embarrassed with a Constitution, a league and a law, both incompatible as they have been shown to be, and which Mr. Calhoun has defined to be "a Constitutional compact." Well may Mr. Stephens say it is something new, never known before; but the objection is, he argues as if it had been known before.

We have heard of Confederate Republics, but never before of one operating on the people only, and not on the Confederates. After setting up such an admitted nondescript, the sophistry consists in arguing as if it were only a

pure and simple league or Confederacy,—in applying to the compound the rules belonging to the simple.

When they say of a simple Confederacy that it is a compact of which each Confederate has a right to judge, we all admit its truth, as did Mr. Webster; but the logical mind cannot admit that Mr. Stephens's conclusions are true; that in the case of this new and compound government—so to call it—the Confederates can by any right of judgment arrest or destroy the operation, on individuals, of the laws established by that government; that though they may secede from the compact part, if it exist, they cannot abrogate, by secession, the law part.

Before the end this idea will be more fully elaborated: for the present the object is to expose the sophistry of arguing from wrong premises.

The reader has seen the ingenuity of Mr. Calhoun in trying to make it appear that a fundamental law, on which had been constructed a government of eighty years' growth, was also a compact, notwithstanding the incompatibility of the two, the plain reading of the Constitution on its face, the practice under it for so long a time, and other reasons not necessary to repeat,—and how he relied on a myth or fiction—the inapplicable cases in the English Constitution and of pure and simple Confederacies—to sustain his position.

The sophists having established, as they think, or pretend to think, that a law, the fundamental law of the Constitution, is a compact, they then apply to it the principles applicable to a pure and simple Confederacy of States only. The case as made by them is a compact contained in a Constitution of government; the principles applied in argument are those of a pure and unmixed Confederacy, treaty, or league. The record compels them to admit it is a "Constitutional compact;" their necessities compel them to argue as if it were a compact only between sovereigns, without any Constitution in the case.

They make a very strong and correct argument when they say that in a compact between sovereigns, whether a treaty, league, or confederation, having no superiors, each has a right to judge, etc., forgetting that they beg the question, and assume what is denied in the very beginning, that it is a *compact* between independent sovereigns, and forgetting that the case at bar—according to their own statement—is not that case, but one where the compact, if a compact, is also a Constitution. We will discard names, and let them call it what they please; but when the proposition is stated,

let the *substance*, at least, of the facts be incorporated. Thus, it should have been stated: In a "Constitutional compact" between sovereign States having no superior, and on which "Constitutional compact" a government is formed by their consent, operating on their citizens as individuals, each State has a right at pleasure to absolve its citizens from obedience to the laws of such government. Now, this is the true proposition, according to the facts admitted by them, and very different from the one they argue so flippantly and with so much confidence and dogmatism; very different from pure, simple, and independent compacts between sovereigns, with no qualifications added.

Independent and separate States have the right to judge and secede in the case of a pure and simple treaty, league, or Confederation; but an argument from such premises cannot be applied to the correct premises laid down above; and it was by thus adroitly and covertly changing his premises, unnoticed by Mr. Webster, that Mr. Calhoun baffled him in their great debate. The sophistry appears in the resolutions introduced by Mr. Calhoun, on which the great debate was made. So much of the first resolution as it is necessary to notice here ran thus on its first introduction:

"*Resolved*, That the people of the several States composing these United States are united as parties to a Constitutional compact," etc.

To meet some criticisms of Mr. Webster's, Mr. Calhoun changed it to read as follows:

"*Resolved*, That the people of the several States composing these United States are united as parties to a compact, under the title of the Constitution of the United States," etc.

The meaning of both is the same, and by both the Constitution is the compact, and it is modified or contradicted by everything in the Constitution. If the Constitution be a law, the compact must be a law,—if such a solecism can be anything. If the Constitution be the fundamental principles on which the government of the United States is founded, so is the compact. If by those fundamental principles the courts of that government are to judge of infractions of the Constitution, so must it be by the compact; for the Constitution and compact are one and the same thing.

We might fill pages showing how this compact has conditions added not to be found in the compacts the basis on which Calhoun's argument and conclusions are founded, to wit, compacts between pure and simple confederates.

The second resolution concludes as follows:

"That, *as in all other cases of compacts among sovereign parties* [italics our own] without any common judge, each has an equal right to judge for itself, as well of the infraction as of the mode and measure of redress."

Does not the reader see that it *is not* "as in all other cases of compact among sovereign parties"? For when did "sovereign parties" ever before make such a compact as that of the Constitution of the United States? and if they did, no civilian would have drawn the conclusions therefrom that Mr. Calhoun has. And no "sovereign parties" united under such a compact would or could have come to such conclusions in practice.

"That *as in all other cases* of compact among sovereign parties," is saying that all compacts among sovereigns are alike, that there is no difference between a "Constitutional compact" and other compacts. The one means a Constitutional government, the other a compact without a government. The one redresses violations of *law* by the constable and his staff; the other, violations of treaties or leagues by the soldier and his bayonet. The one relies on the law courts to vindicate law; the other, on the breath of sovereigns to maintain treaties. The one is represented by the judge on his bench, clad in wig and gown, instructing a jury in their box; the other, by the general on his horse, uniformed *cap-à pie*, with sword in hand commanding his armed battalions on the field.

"Without any common judge." That is true of "all other cases of compact among sovereign parties" without a government or Constitution; but it is *not true* in administering *laws* under a government having a judge to give judgments and decrees; and is most confoundingly not true, because the United States Courts are made the "common judge" by "the compact," which says, "The judicial power of the United States shall extend to controversies between two or more States;" therefore they are not the same, nor are all compacts *alike*, or to be argued as if alike. "Each has an equal right to judge for itself." That may be true of "all *other* cases of compacts among sovereign parties;" but in this case of "a Constitutional compact" and government, other judges are provided. And we protest that Mr. Calhoun and Mr. Stephens shall not be permitted to get over the greatest difficulty in the argument by covertly assuming that all compacts among sovereigns are alike, and then taking

up such as they admit are unlike, and arguing as if they *were* the same.

Mr. Calhoun cannot be permitted to say "as in all other cases of compacts among sovereign parties," when sovereign parties never before made such a compact; and the one under consideration can no more be said to be as one, or like one, that never existed, than Mr. Calhoun could have been called like an unborn child.

This way of stating the case falsely to suit the argument, instead of making an argument to suit the case *truly* stated, would turn Mr. Webster or any one else down and keep him down, if permitted.

We have the authority of Mr. Stephens for saying that ours is not like any other Government, or any other Confederacy of Governments, preceding it, and therefore the laws of nations, applicable to those that have gone before, are not pertinent in those cases where they are unlike the United States. At page 478, speaking of the Constitution of the United States, Mr. Stephens says:

"That it presents, in its structure, several new features wholly unknown in all former confederacies of which the world's history furnishes examples, all admit."

And yet, on the same page, he makes an example of the Articles of Confederation, when he says:

"In other words, we have seen, and come to the conclusion from a review of all the facts, that the Constitution, *as the Articles of Confederation* [italics ours], is a compact between the sovereign members of the Union under it."

In other words, that it (the Constitution) is a compact like the Articles of Confederation, when there are few things more unlike, and when he has just said there never was anything before like it. We have shown how they differ, because one is an agreement or league, and the other ordained law.

Mr. Stephens proceeds on the same page to say:

"This [that it was unlike all others] was well understood at the time of its formation, as well as ever since. No exactly similar model is to be found among all the nations of the earth, or in the annals of mankind, in the past or present."

Mr. Stephens then goes on to show that the framers of the Constitution had in view Montesquieu's model of a Confederated Republic, which he makes very much like ours, except that the model had "no power" "to interfere in any way or under any circumstances with the individual citizens

of the separate Republics." The new idea, which it seems was laid "in Mr. Jefferson's brain," brought forth the Constitution of the United States. He proceeds:

"It was simply for these separate Republics to empower their joint agent, the artificial or conventional nation of their own creation [a roundabout way to say the United States], to act in the discharge of its limited functions directly upon their citizens respectively, and to organize the functions into separate departments,—Executive, Judicial, and Legislative."

Well, Mr. Stephens, if it was organized like the States, or the "separate systems" which you call governments, why not say the Constitution or Government of united States, and not "organized functions"? And why argue as if such an unprecedented and complicated "Constitutional compact" were a pure and simple Confederacy?

Again, at page 481, he calls the Constitution a "newly-born idea," . . . . "a new feature in Confederate Republics, which has puzzled and bewildered so many, in this, as in other countries;" and it will bewilder and puzzle still more to apply the rules of those old, known, simple Confederate Republics to this "newly-born idea," and in the cases where the new and old are most unlike.

Well, if it be this new kind of government and new kind of compact, why argue as if it were like "all others" in the very part in which all the difference exists?

They first make a law a compact, and then a simple compact a compound or complex compact; and thus, by fallacy on fallacy, a *law* operating on individuals is made to mean a league between sovereign States,—two things as unlike as day and night.

For the sake of argument, we have admitted what is not true, that the Constitution is not merely a law, but a compact also: in the language of Mr. Calhoun, that it is a "Constitutional compact."

We will now admit, for the same reason, what we think we have also proved to be untrue,—that the Constitution was ratified by the States; that it was not only made by a convention of State delegates, but ratified by them also, or by the State Legislatures,—as it should have been to have made it a "compact between States."

The idea of the sophists is, we presume, as strongly and clearly expressed on this subject by Mr. Calhoun as it can be.

Mr. Webster had said, in "the great debate," that there was an incompatibility between a Constitution and a compact. Mr. Calhoun, replying, said:

"I confess I am not capable of perceiving in what manner these words are incompatible with the idea that the Constitution is a compact. The Senator will admit that a single State may ordain a Constitution; and where is the difficulty, where the incompatibility, of two States concurring in ordaining and establishing a Constitution? As between the States themselves, the instrument would be a compact; but in reference to the Government, and those on whom it operates, it would be ordained and established,—ordained and established by the joint authority of two instead of the single authority of one." (See page 349.)

Mr. Calhoun did not meet the argument. Mr. Webster had not said that there was any difficulty as to two or more States "*ordaining and establishing.*" The objection was as to the inconsistency of saying an agreement to do a thing was the same as a law declaring it shall be done. One says, in the language of Blackstone, I will and I will not; the other, Thou shalt and thou shalt not. Or, in the language of Mr. Calhoun in another place, agreements bind States; laws, individuals. And Mr. Calhoun, in this "unanswerable speech," seeing he could not reconcile light and darkness, evades the undertaking, and says two States can ordain and establish a Constitution as well as one. This no one denies, and Mr. Webster had not denied it. And such are the evasions of the sophists; for neither Mr. Stephens, Mr. Calhoun, nor any one else has undertaken to prove two things so dissimilar to be the same, and until they do this they may stop citing authorities, living or dead, for we would not believe such a paradox though one should rise from the dead and assert it. We said Mr. Calhoun failed to answer Mr. Webster. Besides the others, here is a question still unanswered, and it will so remain until truth and falsehood are the same.

Mr. Stephens in one place treats a great part of the Constitution as a bundle of covenants. And it is a very easy matter to set down fundamental laws as so many covenants, but impossible to prove them such. He does not show, any more than Mr. Calhoun, where the States covenanted with each other; where they pledged their faith for the observance of the covenants, as in the Articles of Confederation, and as States do in all leagues; and he also admits, in other places, that they are laws operating on the people.

Let us make an analysis of one of Mr. Stephens's covenants, and see how it has worked, and will work, as a covenant; and it shall be one that looks more like a covenant than any other, being a prohibition on the States. It is the first section of his second class of covenants, at page 182, and nothing more than a clause of the Constitution:

"No State shall enter into any treaty, alliance, or confederation: grant letters of marque or reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

Now, where has any State pledged its faith or covenanted with another State that it would do none of these things? It will be admitted that it was ordained and established as law in the whole United States over all the people, and has been so executed; and that is all that can be made of it by the terms of the Constitution. Nearly every one of these prohibitions has been violated by some of the States,—if the States can violate the Constitution, according to its true theory. Acts have been passed contrary to them, and they have simply been declared not to be law, and have never been treated as covenants. None of the other States appealed to the offending States, as in the case of violation of compacts or "covenants" between States, to repeal the unconstitutional law or to give other redress; and for the best of reasons, because no State had pledged its faith or "covenanted" not to pass such laws. A Constitution had been ratified by the people, declaring they should not do it. It was a command, saying, "Thou shalt not," and if thou dost, it will protect no individual acting under its authority, because it will not be law.

The State Legislatures are commanded, as their own Constitutions command, not to pass certain laws; and if passed they are null and void, without any covenants in the matter.

It has been shown that the Constitution did not operate on States in theory or practice; and calling the Constitutions a collection of covenants does not make them such, any more than calling an execution a note makes it such. There is the same difference between a note and an execution that there is between "covenants" and laws. One promises to pay, the other says you shall pay.

We have shown how the Constitutions of Georgia have been, in substance, copied from that of the United States, and how the latter appears to be, if anything, more a declaration of laws than the former. Then, if the Constitution of the United States be a string of covenants, so must be the Constitution of Georgia. And if, because the one Constitution is a string of covenants, it is therefore a compact between those (the States if you choose) who voted for it, so must the other be between Tom, Dick, and Harry who voted for the State Constitutions, which cannot be, according to

Mr. Stephens's theory, or Tom, Dick and Harry might claim some rights very incompatible with good government, or with any government at all.

Georgia, and, we have no doubt, every other State of the Union, has provided that no *ex post facto* law, or law impairing the obligation of contracts, shall be passed; and who ever supposed that such provisions are covenants that it shall not be done? Such laws, whether passed by the United States or State Governments, are not to be arrested by covenants, but by the courts decreeing them void.

Mr. Stephens has a string of extracts from the Constitution in his analysis which he calls covenants of the second class, and another, at the conclusion, without any classification. What is left of the Constitution, he says, are:

"First, specific *grants* of power; and secondly, certain limitations upon the powers so *granted* or *delegated*." (See page 184.)

For another purpose, to appear hereafter, the reader will note, from the words italicized, that Mr. Stephens treats granted and delegated powers as synonymous, and admits thereby that the powers of the Constitution have been *granted*. He uses them as synonymous again at page 172.

The first question concerning this analysis is, By what authority does Mr. Stephens call some portions of the Constitution covenants, and not the rest, as they are all ordained and established as law? If some are grants of power, why are not all? The States have nowhere pledged their faith to any of his covenants, and there can be no covenant without a pledge or promise by some one. There was none to or by the United States, because not *in esse* when the covenants were made.

"The trial of all crimes, except in cases of impeachment, shall be by jury," etc., Mr. Stephens says is a covenant; and that clause which says, "Treason against the United States shall consist only in levying war against them," etc., is a granted power,—by which we understand he means a fundamental law.

That "full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every State," is a covenant, and "to exercise legislation [by Congress] in all cases over the District of Columbia," is a law.

We think Mr. Stephens, if compelled to give a good reason why some of the above clauses are fundamental laws, and others covenants, would find it as difficult to show as that a compact and a law can be the same. And we think it would

be as difficult to explain why similar provisions in a State Constitution with those in that of the United States should not as well be covenants in one as the other; they are both ordained, established, and declared alike as laws.

One of Mr. Stephens's covenants is, that "trials shall be held in the State where the crime shall have been committed." How could Georgia make any such covenant? She has no control over the United States courts to compel an observance of such a covenant, and, if violated, what State could make her responsible? If the judges should violate it, they, and they only, could be punished by impeachment. Neither they, nor any department of the Government, could be held responsible to a State for violating a compact or breaking a covenant they were no parties to,—not having been in existence when made.

It is all plain when the supposed covenant is considered as an ordained and established fundamental law, to be executed by a power "*granted*" by the Constitution; and it is nothing but "a puzzle" when treated otherwise.

Pages could be filled showing the absurdity of calling some portions of the Constitution covenants, and others granted powers, and, indeed, of calling any of it covenants at all; but the above must suffice.

To evade the force of the absolute grant of power to the United States Government, the sophists have resorted to their common device of perverting the meaning of words. Hence, they substitute "delegated" for "granted," and "agent" for "government;" for they see the audacity of claiming the right to revoke a grant, or to forbid a government from executing its laws over those subject to them; but that, with more plausibility, they may assert the right to resume "delegated powers," or revoke an agency.

The first place where we have noticed the words "delegated powers" in reference to the Constitution, is to be found in the Tenth Amendment, where it is said "the powers not delegated," etc. It is evident that it is used there as synonymous with granted; for, by reference to the Constitution, it will be seen that the 1st Article opens by saying, "All the legislative powers herein *granted* shall be *vested* in a Congress," etc.

Article 2d.—"The executive powers shall be *vested* in a President," etc.

Article 3d.—"The judicial power of the United States shall be *vested* in one Supreme Court," etc.

From the words italicized, it will be seen that the powers

"granted" are vested in each department of the Government; and what has been "granted" or "vested" cannot be resumed at the pleasure of the grantor, as the sophists say can be done of delegated powers. And when the Constitution said, in the Tenth Amendment, "the powers not delegated," and you refer to it to find those "delegated," you will not find any, but they all have been "granted" or "vested;" therefore the word "delegated," as thus used, necessarily is synonymous with "granted" or "vested." But, if used in the fraudulent sense, if such a term can be respectfully used of the sophists, that could not avoid the grant, if on its face it be in fact a grant.

Mr. Stephens himself, in referring to the powers granted in the State Constitutions, speaks of them as "delegated powers," as will be seen at page 145. So then, the powers in the Constitution of the United States, whether delegated or granted, are held by the same tenure as those of the States are under the State Constitutions; and for the purposes of our argument we want no better or more irrevocable title to the powers granted in the Constitution of the former than the latter. The reader will remember we notified him that at pages 172 and 184 Mr. Stephens uses the words delegated and granted as synonymous. He will recollect also the complaint before made against Mr. Stephens for calling the Government of the United States an "agent," and that at page 144 he calls those of the States "agents" also. And we are willing that the former may be considered such an agent as the latter; for then, if the delegated powers can be resumed and the agency revoked in the one case, they can in the other; and if not by a single constituent in the one, they cannot in the other. But giving to the terms "delegate" and "agent" all the meaning Mr. Stephens would have, it does not follow that, because the delegate may be recalled or the agency revoked, their acts *before* that are not as irrevocable and binding as if done by the principals.

Mr. Stephens is wrong in supposing the powers in the Constitution are declared to be delegated. The mistake is that the author of the Tenth Amendment so presumed, as does Mr. Stephens, and it was adopted in that shape without any suspicion that the word delegate would ever be tortured into the revolutionary meaning given it by the sophists.

While on this subject, it will be well to notice a "*maxim*" laid down by Mr. Stephens at page 40, where he says, "Whatever is delegated may be resumed by the authority delegating. No postulate in mathematics can be assumed

less subject to question than this;" therefore, if thirteen granted or delegated, one only cannot resume.

The reader will do well to recollect all this, for when we come to speak of resuming delegated powers and revoking agencies granted by all the States, it will be very material in considering whether one can undo what all did. Mr. Stephens and Mr. Calhoun both lay much stress on the words "the ratification of the Conventions of nine *States* shall be sufficient for the establishment of the Constitution *between the States.*"

We have already shown that a misnomer cannot alter the plain meaning of any instrument, public or private, and that persons are not to be bound by admissions or statements made inadvertently, not considering their importance or application to questions not then in contemplation. And, as evidence that the Convention thought the above words of no extraordinary significance, in the resolution of the 17th September, 1787, submitting the Constitution to Congress, they request that it "be submitted to a convention of delegates chosen in each State by the *people*," etc., and in the second resolution they speak of it as a "convention of nine *States;*" all showing that the words were used indiscriminately, and not with reference to any such question as that raised by the sophists. See 4th Elliott's Debates, 248–9.

The framers of the Constitution did not anticipate that any such construction as the sophists now endeavor to give that instrument would ever be attempted. And the most to be made of it is that the ratification established a fundamental *law*, and not a compact, between the States. All they intended to say was that it should be established by the people in the States. The sophists admit it is a government operating on the people in the States, which is conceding that it is a government between the people of the States; and the people of the States being also the people of the United States, it is a government, in fact, between the people of the United States.

Mr. Stephens, and all of us, constantly use the word State when we mean the people of a State. We say the State of Ohio voted for Grant, or a State has elected a full representation to Congress, when we mean the people. It would be proper to say a State had elected Senators, though not Representatives, or a President; and it was just this kind of carelessness that made the convention use the words above relied on.

It is monstrous, and but catching at floating straws, to say an inapt expression shall change the whole character of an

instrument,—that if the dying testator should say, This my last deed, and should make a perfect will, the former instrument, instead of remaining the last will and testament, as intended, should be declared a deed because of a misnomer.

Why, according to Mr. Stephens, if the Constitution had said between the "monarchies" instead of "States so ratifying the same," we would have had a monarchy instead of a republic. And though Mr. Stephens writes with good taste and in good temper, he seems almost in a passion with Mr. Motley under the apprehension that he might not attach the same importance to these words that he does.

The necessity of having the ratification of each State was not to *make* a Constitution by *States*, as the sophists hold, but that no State should have her sovereignty, or any part thereof, taken from her by others without her consent, as we have already shown. For no independent State could abide such a wrong. The United States Government could not, without encroaching on the rights of a sovereign State, have been organized over a State without the latter's consent, however small she might have been. To use the language of Mr. Stephens, the power had to be taken from one set of agents before it could be delegated to another.

And the ratification had to be by nine *States*,—indeed, by each State,—for these reasons. To resume the powers of sovereignty granted by the people to the State ("body politic"), it had to be done by the people of each State; and this resumption as well as regranting—or re-delegation, as Mr. Stephens would say—was done by *consent* of the States as bodies politic, as before shown, in convention; but the regranting to the Government of the United States was by the *people* when they gave "the finishing touch,"—ratification. And though the votes of that ratification had to be collected by States, for convenience, it was the ratification or grant of the powers of government by the whole people of the United States, to govern the whole people of the United States.

Whether the object was to make a consolidated government—as Mr. Stephens chooses to call it—over the whole people of the United States, or a government "of States and for States," as he holds, the States and people of the States might well refuse to abandon the old system and adopt the new, unless they could have the respectable number of nine States.

On page 143, Mr. Stephens is earnest in declaring that the Constitution "is not established *over*" the States. We believe it was Sheridan who said of his adversary that he not

only ran his head against a wall, but built one and packed it strong and made it hard to butt at. Now, we will not accuse Mr. Stephens of *building* a wall for such an amusement; but he often travels out of his way to find a hard butting obstacle: for he seems to have taken some pains—for which there was no necessity—to run against the second section of the third Article of the Constitution, which extends "the judicial power" of the United States "to controversies between two or more States."

If Mr. Stephens can understand, we do not think the reader can, how a government can have the power to judge of controversies between individuals or States and not be a government "over" them. If not, then the language has lost its meaning when we say "the court has jurisdiction *over* the person, the place, the subject-matter," etc.

The Constitution is so full of provisions showing it to be a government over States, or rather the people of the States, that we can notice but a few.

To any but a secessionist, our government, which has "the revision and control" of certain important laws of others, and can forbid them to "enter into any treaty, alliance, or confederation, to grant letters of marque and reprisal, coin money, emit bills of credit," and to do many other like acts of sovereignty—to "keep troops or ships of war;" that can command them to deliver up fugitives from justice and labor, and not to establish but one kind of government—a Republic, etc. etc., if not a government *over* such subordinates, language and power cannot make one. Mr. Stephens, here, as in the case of sovereignty, and several other matters, denies that a thing is done, unless in terms that he chooses to select. To show by facts that a thing has been done, is more convincing than to *say* it has been. To show that a conveyance in its terms is a will, is better than to name it as such. To show that sovereignty has been granted is more satisfactory than to declare it has been, and to show that one government has power to control others in most of their important powers proves it more conclusively a government "*over*" them, than to announce it one of that high character.

Though the United States cannot operate directly on the States, but controls their action by declaring their laws void so that they cannot be executed, it is, in substance and fact, as effectually over the States as if the action was direct and the Constitution had said, in terms, it was a government "*over*" the States. Indeed, to have *declared* it a government over the States would not have made it such unless it was so in fact.

CHAPTER IV.

THE STATES ARE NOT WHOLLY AND ULTIMATELY SOVEREIGN, NOR IS "THE AMENDING POWER," AS HELD BY MR. STEPHENS.

We have argued that Mr. Stephens's premises are not true; but conceding they are, yet, with the admission that the United States is a government by proper authority, no State has any right to absolve the citizens of such government from their obligations to obey its laws. Mr. Stephens's premises, therefore, may be true, and yet his conclusions false.

As the government is admitted to be by proper authority, it matters not—so far as the rightfulness of the war on the part of the United States is concerned—whether or not the States be sovereign. But as it would be of the utmost consequence if one of the late rebels were indicted for treason, we will summarily review Mr. Stephens's doctrine on the subject of treason, sovereignty, and allegiance.

A State may be wrong in waging an unjust war, and the citizens right in obeying its commands. Therefore, though the seceding States were wrong in waging war against the United States, the people thereof may have been not only right, but free from the pains and penalties of treason, provided the States were "ultimately sovereign" and had the entire and undivided allegiance of their citizens.

Mr. Stephens has such a confused way of not discriminating between the people of a State in their unorganized character and the body politic,—which only is a State,—that it is difficult to say where he locates sovereignty. From what he says at pages 20 and 40, we take it he holds that the people, unorganized, are sovereign, contrary to what Bowyer, at page 212, and other civilians, hold.

At page 39 Mr. Stephens says sovereignty "*resides* with the people." At page 492 he uses the same language, and adds, "This sovereignty so *residing* with them [italics ours] is the paramount authority to which allegiance is due."

Mr. Stephens speaks of sovereign authority as delegated to the States or United States, as at pp. 39, 40, and of the resumption of authority, as at page 144; and then, as at page

40, "there is no sovereignty in the General Government or the State Governments;" "sovereignty itself, . . . I repeat, remains and *ever* resides with the people somewhere." How this can be after delegation and *before* resumption of sovereignty by the people, we cannot comprehend; for when delegated to a State or the United States, we cannot understand why they are not sovereign during the delegation; and, if sovereign during such delegation, how can the people be sovereign too? The delegated State is the constant relation between the people and government.

Mr. Stephens might try to escape the dilemma by saying the people are "ultimately sovereign." This, however, would be running from one difficulty into another; for while the "delegated" (we say *granted*) power is in the State or United States, they only could protect and punish treason, and allegiance, therefore, would be due them. This ambulatory sovereignty and allegiance is born of sophistry, unknown to civilians, and seems to be made for a desperate emergency.

From many such like equivocal, not to say contradictory, expressions, as above noted, he leaves the reader in doubt whether he means to say the unorganized people are sovereign, or that sovereignty only *resides* with them, to be appropriated by their votes.

In his letter of the 11th August, 1869, to Mr. Greeley, he says:

> "By state sovereignty, I understand the sovereignty of the people composing a State, in an organized political body."

This is intelligible, and can only mean the State government, because that, besides the Government of the United States, is the only "organized political body" of the people known; but it is inconsistent with sovereignty, in the mass, unorganized; and it is inconsistent with the ratification of the Constitution by the States, because it was not done by the people in an organized political body, as shown in Chapter II. More than ninety-nine-hundredths of the people's acts are done as unorganized individuals. Indeed, they do but very few as of the bodies politic,—States or United States. Sovereignty may "reside" with the unorganized multitude, and be theirs to confer, concentrate, or appropriate to a political organization called the State. Under such an organization they are sovereign, but manifest it and act through the State by its various departments,—legislative, executive, judiciary, etc. But when acting individually, as when they ratified the

Constitution, they do not act as a State, and may be conferring sovereign powers without any one individual being sovereign over others; just as they may by votes make governors, presidents, etc., without being either.

Sovereignty means the right to command, control, make laws, and punish for their violation, etc. An unorganized mass can do none of these things. Who, among such a multitude, has the right to command or control another?

Suppose it possible to abolish the body politic or to destroy all government in a State, and leave an unorganized million without any head, or body, or individual with power to control; who among such a mass could claim the right to be sovereign over his neighbor? No one; and therefore no individual or collection of individuals unorganized can, as such, be sovereign; and it is only when some one as king, or many individuals forming a body politic, can control the multitude, that there can come into existence the attributes of sovereignty. It has no existence until then.

The only difference between republics and monarchies not elective, in this respect, is that in the former sovereignty is conferred by organized votes, and in the latter by the sword or birth. An Indian chief may obtain it by address or bravery. It is inseparable from the power to command or control; and hence all the civilians say—and Mr. Stephens says—that allegiance and protection are reciprocal, and it takes power to protect.

We agree with Mr. Stephens that the States were sovereign under the Confederation, but we do not when he says they never parted with sovereignty or did not confer any part of it on the United States by the Constitution; and those who made it thought as we do, as we will proceed to show.

In the second article of the Confederation, it was declared that "each State *retains its sovereignty* [italics ours], freedom, and independence," etc.

If such a precaution was necessary in those articles, how much more was it in the Constitution, where such extensive additional powers were granted the United States! Instead of that, the Convention admitted that all independent sovereignty *had not* been reserved to the States.

After the Constitution had been agreed to by the Convention, Washington, its President, reported it to Congress in a letter to that body. Mr. Stephens tells us, at page 148, that the letter was prepared "by the Convention that framed the Constitution," that "it was prepared and reported with the Constitution," and that "it was taken up and adopted, para-

graph by paragraph, the same day and immediately after the adoption of the seventh article." So it was the declaration of the Convention as well as of Washington. Among other things, it said:

"It is obviously impracticable, in the Federal Government of these States, to secure all rights of independent *sovereignty* to each, and yet provide for the interest and safety of all. . . . . In all our deliberations on this subject, we kept steadily in our view that which appeared to us the greatest interest of every true American,—the *consolidation of the Union*," etc.

Now, if the Convention thought, when taking up the letter "paragraph by paragraph," as Mr. Stephens does, would they have left the words we have italicized? There can be but one answer from all except the sophists.

As we are arguing this question on the terms and merits of the Constitution alone, we would not hold Mr. Stephens concluded by the letter, if he could show that Washington and the Convention were mistaken in supposing they had impaired the sovereignty of the States.

Expecting and feeling the force of such a challenge, Mr. Stephens makes the effort to parry its effect, by saying, again and again, that sovereignty by the Constitution has not been parted with; that neither it nor allegiance is once mentioned in the Constitution (see pages 83, 135–6–7, 190–4, 393, 487–8–9). Nor is either mentioned in the State Constitution under which Mr. Stephens has lived nearly all his life, and we presume they are not mentioned in any other State Constitution.

At pages 39–40, he says, "The exercise of supreme or sovereign powers may be by delegation. In this country it is entirely by delegation." Now, we ask Mr. Stephens, where do we find in terms such delegation in the State Constitutions more than in the Constitution of the United States?

If the attributes and constituents of a thing be granted, the thing itself is.

The whole may be granted in parts. A freeman might grant away his freedom and consent to become a slave without using either term. Let him grant to a master the right to take his labor without compensation, with power over his life and liberty, and over his posterity after him, would not he be as much a slave as if he had granted his freedom and consented to become the slave of the latter in terms?

Let Mr. Stephens have been the owner of township number ten, and let him have granted by separate deeds every section, by metes, or natural or other boundaries, the town-

ship would be gone from him as effectually as if he had granted the whole by name. And standing in presence of the grantee, he might proclaim,—

> "I am monarch of all this survey;
> My right there is none to dispute;
> From the centre, as far as I can see,
> I am lord of the fowl and the brute;"

but he would, notwithstanding his boast, find himself as landless as if he had granted the whole township number ten by name in one deed.

We once counted the grants in the Constitution which are incompatible with the sovereignty of the States, and made them some fifty or sixty. It is sufficient for our purpose to say that the United States has granted to it, in the Constitution, attributes of sovereignty as well as States, and grants, besides, which are inconsistent with the sovereignty of the States. It has legislative, judiciary, and executive powers, which constitute the whole sovereignty of any State. It matters not, as we have so often said, how granted, as it is admitted to have been by proper authority. It has these powers over every individual within its geographical limits; and if that does not clothe government with sovereign powers, no State has them.

Perhaps the sophists may answer, they are limited. So are nearly all monarchical governments limited; still, they are sovereigns. And, what is more to the point, the powers of the States are limited too, and limited in a way more incompatible with sovereignty than any limitation on the government of the United States.

Can a State be fully and completely sovereign which cannot enter into any treaty, alliance, or confederation,—which cannot grant letters of marque or reprisal, emit bills of credit, coin money, or make anything but gold and silver a legal tender,—which cannot, without the consent of Congress, lay any imposts or duties on imports or exports, etc., or keep troops or ships of war, or enter into any agreement or compact with a foreign power, or engage in war? And, what is not only inconsistent with any idea of sovereignty, but with the doctrine that the Constitution is a compact, no State can "enter into an agreement or compact with another State" without the consent of Congress.

Mr. Stephens says the Constitution is a compact entered into between sovereign and independent States; and yet in that compact they declare States cannot make it without

consent of Congress: declaring the Constitution a compact between States would have made it void for want of the consent of Congress not then in existence. Indeed, no such consent has ever been given. We see again more absurdities if the Constitution be a compact. Let it be a law, as it is, and all is consistent.

It would be too tedious, and would occupy unnecessary space, to notice even half the clauses of the Constitution incompatible with the entire and full sovereignty of the States; and therefore one or two more must suffice.

By the Sixth Article of the Constitution, it and the laws of the United States are made the supreme law of the land, anything in the State Constitutions or laws to the contrary notwithstanding. And by Article Fourth, the States are prohibited from having such forms of government as they may choose, as the United States therein guarantees them a *republican* form of government. Without noticing other clauses, how can a State be completely sovereign whose laws are not supreme over its soil; the decisions of whose courts can be overruled by a higher power; that cannot settle its controversies with other States by the sovereign right to fight, but must be dragged before the courts of the United States to receive and submit to its judgments, right or wrong; and that cannot choose its own form of government? For the States are compelled by the Constitution to be republics.

No power can be completely sovereign that is not supreme in everything over its soil, much less one shorn of all the great attributes of sovereignty. It is a contradiction in terms, to assert the contrary.

If the Constitution had even declared, as in the Confederation, that the States had retained their sovereignty and independence, they would not have done so after granting away all the important elements of sovereignty; such a declaration would have been void on account of its inconsistency with the Constitution. Two things so contradictory could not have existed together.

Mr. Calhoun, in his definition of a sovereign State, at pages 363–4, admits the States are not sovereign.

Speaking of the civil supremacy of a State, he says, "If it can exercise justly all the essential parts of civil power within itself, independently of any other person or body politic,—and no other has any right to rescind its acts,—it has the civil supremacy," etc.

The States do not, by a great deal, come up to this definition. For they *do not* exercise all—nor hardly any—of the

most essential parts of civil power within themselves, independently; and the United States can and does rescind their acts, by preventing their execution on individuals, in many important cases.

Mr. Stephens, at page 144, admits that sovereign powers were delegated to the United States by the people; and at page 152, after mentioning that many sovereign powers had been delegated under the Confederation, and that more were proposed to be given in the Constitution, says, "This required *a different organization.* That is, a division of the departments into which *all* the powers were to be intrusted." Sovereignty cannot be retained if its powers or constituent elements have been granted or intrusted to others. It consists of power; and if the States be sovereign after losing all the great elements thereof, it is the play of Hamlet with Hamlet omitted. Mr. Stephens's sovereignty, exhausted of its power, is an empty bubble, as unsubstantial as ridiculous. He and Mr. Calhoun both seem, from the above extracts, to have forgotten for a time their own doctrine.

When Henry the Eighth became tired of his queen, Catherine of Spain, his heart was greatly troubled with love for Anne Boleyn; but he pretended it was his conscience on account of his love of the Levitical law. He laid his case before his counselors and prelates, who had to pretend great concern for his afflicted conscience, though all understood the hypocrisy of Henry as well as he did himself. We have often thought it must have been a great trial to those dignitaries to keep their countenances while pretending to think of the case as they knew Henry was determined they should speak of it.

If the Convention, when deliberating on the Constitution, had been obliged, on account of some overruling influence,—as in the case of Henry and his advisers,—to pretend that they were making a compact between *sovereign* States, or rather States that were afterwards to be sovereign, while voting on such provisions as the above they would have had as hard a trial to sustain their gravity as Henry's counselors.

How very humiliating and ridiculous it would have appeared, that this mere creature of independent sovereigns, "this agent" to collect taxes, this attorney "with delegated powers," which any of them could revoke to-morrow, should prescribe what sort of governments they should have; that its laws and courts should be superior; that they—independent sovereigns—could have neither army nor navy to sustain their power and independence, could not make a treaty with

foreign sovereigns, or a compact with one another, without the consent of their agent!

It is said that a lie well stuck to is as good as the truth; so error, boldly asserted, will be believed as soon as or sooner than the best logic timidly advanced. And by boldly proclaiming in and out of season for fifty years that the Constitution is a compact between sovereign States, it is believed by nearly half the population in the United States.

To all the array of sovereign powers granted to the United States and prohibited to the States, Mr. Stephens opposes the fact that the States are represented in the United States Senate. This signifies nothing more than that the small States compromised on this as a compensation for surrendering their sovereignty. If they had retained their sovereignty, with power to secede, in Mr. Stephens's sense, at pleasure, they would have had no need of State representation; so if it proves anything, it is that sovereignty was surrendered for representation in the Senate by States.

Mr. Calhoun and Mr. Stephens speak of the Senators as ambassadors; then the great pile of statutes at large are treaties or leagues, and we have been mistaken this hundred years in having them adjudged and executed as laws, while each State should have been appealing to the numerous sisterhood to enforce treaties.

Why is it that, because the States elect one branch of the Legislature in consideration of the loss of independence and sovereignty,—or for any other reason that Mr. Stephens may choose,—why is it the Senators cannot aid in making laws for this new body politic without changing its whole character? and why has it any right to give character to the government more than the other branch of Congress?

The same reasoning would make England an oligarchy because of the House of Lords.

By such arbitrary and dogmatic assumptions, anything can be proved.

Another of his arguments in favor of sovereignty is that the members of the House are elected by voters who are qualified to vote for the most numerous branch of the State Legislature. This was done for convenience and for its fairness, and signifies nothing, as everything does which will not restore to the States the sovereign powers granted to the United States by the Constitution.

Mr. Stephens, at page 492, says, allegiance "means the obligation which every one owes to that power in the State to which he is indebted for protection of his rights of person

and property. Allegiance and sovereignty, as we have seen, are reciprocal. To whatever power a citizen owes allegiance, that power is his sovereign." This is the correct doctrine, as laid down by all civilians, if Mr. Stephens had properly applied it.

He is explicit in saying, "Allegiance is due the power that can rightfully make or change governments. This is what is meant by paramount authority or sovereignty." (Page 25.) At page 491, he reiterates the same doctrine more at length.

Allegiance and protection are reciprocal, and the difficulty in making the former due to the unorganized multitude is, that the mob, instead of protecting, destroys. Another objection to having it due to the power that can amend the Constitution is, that we do not know which part of the power, for it is composed of several parts, or whether it is all, as it takes several to alter the Constitution.

Two-thirds of both houses of Congress must first deem it necessary, and secondly, Congress must propose amendments; or thirdly, two-thirds of the several State Legislatures must apply, fourthly, to Congress to call a convention for proposing amendments; and then fifthly, three-fourths of the Legislatures of the States must ratify. Now, will Mr. Stephens tell us to which one of these five bodies—or the people who may elect them—we owe allegiance? Or do we owe it to all? And then will he tell us what to do, as there will be changes in some, perhaps all, of these bodies, before the amendment will be effected? And will he tell us to which we shall look for protection?

As there are two ways in which the Constitution may be altered, and either is possible, therefore our sovereign is a possibility.

What will Mr. Stephens do with his theory of the indivisibility of sovereignty? for it will not only be divided, but divided into unequal proportions, as some citizens will have a larger share than others, let the Constitution be amended as it may.*

No king of a limited monarchy—such as England—can amend the constitution of his kingdom, and all publicists admit that sovereignty in such governments is vested in the monarch. No one but Mr. Stephens ever before thought of

* In ratifying the amended Constitution by State Legislatures, the citizens of no two States would have an equality of sovereignty, and some would have five times more than others.

giving sovereignty such a strange locality, nor can he be permitted to do so, even for the sake of secession.

And here, again, is another difficulty if the unorganized people are sovereign, and can have treason committed against individuals; for if Tom and Dick should fight they both are guilty of treason, instead of assault and battery, as they mutually war on their respective sovereigns.

There must be a sovereignty in existence to whom allegiance can be accorded, against whom treason may be committed, and that can punish the great crime. The power to *confer* sovereignty will be known when the time comes to change or make a new sovereign, but in the mean time the sovereign must be known and in the exercise of sovereign powers; and it cannot be known in which way the Constitutions, State or Federal, will be changed; for most of the States, as well as the United States, have two modes.

Sovereignty is not an empty bubble, or a fiction, like John Doe and Richard Roe, or like the social compact. The power cannot be with one and the name with another; if it can, the latter will have but a name. Treason can be committed against an existing power only, and not against a name that cannot punish.

When Mr. Stephens said, at page 492, that "Allegiance and sovereignty, as we have seen, are reciprocal: To whatever power a citizen owes allegiance, that is his sovereign," he but repeated the universal law on the subject, which has met with the approbation of all men.

Now let us test his sovereigns by this rule. If he means that the unorganized multitude is the "paramount authority," the objection is that its office often seems to be to destroy the unprotected, to burn towns, houses, churches, school-houses, convents, and all other unprotected property, which, in their wantonness, they choose to demolish; to assault, murder, and ride masked at night, and assassinate the helpless and unprotected.

If he means the amending power—or, rather, powers—of government, the objection is that they cannot protect; for neither a majority nor two-thirds, without the judiciary and executive, can protect either person or property. And two-thirds or three-fourths of the Legislature of the several States, as such, are as helpless, in the way of protection, as Congress without the President and other departments and officers of government.

Protection is with the whole government, its departments and officers. Protection is, and can be, with the States

severally, or the United States, as political bodies only; and allegiance must be due to one or the other or to both, and no such mind as Mr. Stephens's could ever have had it otherwise but for having run in the groove of "State rights" for half a century. He seems, at page 40, to be conscious that he had followed that rut until he was lost, when he said, "There is no sovereignty either in the general government or State governments," and repeated twice that it was "with the people *somewhere*."

Perhaps we should have said his sovereignty had gone astray,—nay, had never been found. For we have shown, if it exists, it is so lost among the amending elements that no one can tell where it is. And Mr. Stephens was prudent when he said it is "somewhere." He must, however, show us his hidden majesty before we can render him the homage of allegiance and look to him for protection.

The reader will remember that Mr. Stephens says, at page 492, "to whatever power a citizen owes allegiance, that is his sovereign," and much more of the same purport. At page 40 he says, sovereignty is not in the "State governments," but with the people *somewhere*. Let that "somewhere" be where it may, it is not with—according to his doctrine—"the State governments."

Let it be noticed that the States and people, at pages 40 and 144, are put in opposition and cannot mean the same; for they are contradistinguished from each other by one being sovereign and the other not. Turn again to pages 492 and 493, where he is discussing whether the United States or States give the citizen protection, and it will be observed there that the protection given to the rights of citizens by the States is as bodies politic. He speaks of "the sovereign will of States," and says, "This sovereign will fixes the status of the various elements of society, as well as their rights." Mr. Stephens must know that this can be done by the State as a body politic only, and that there is no organization of the people, apart from it, that can do anything, unless it be to administer lynch-law.

He proceeds to say, "In the States severally remains the great right of eminent domain, which reserves to them complete jurisdiction and control over the rights of person and property of their population."

Who, Mr. Stephens, but *the State*, as a body politic, can control the right of eminent domain, can grant rights of way? and who but its courts can take jurisdiction over it? Can the unorganized mob make such grants, and have they

any judges (except Judge Lynch) to take the jurisdiction of which you speak? "With them" (the States), Mr. Stephens proceeds to say, "remains untrammeled the power to establish codes of laws,—civil, military, and criminal. They may punish for what crimes they please and as they please, and the government of the United States cannot interfere. To their own legislatures, their own judiciary, their own executives, their own laws,—established by their own paramount authority,—do all the citizens of all the States look for whatever protection and security they possess or enjoy in all the civil relations of life." This is enough to show that Mr. Stephens says *here* the States are sovereign, and that they, and not the unorganized mass, give protection to the people by the exercise of sovereign powers. We say unorganized mass, because if organized they become a State, which, says Mr. Stephens, is not sovereign. If the States are sovereign in one place, they must be so in another, however inconvenient it may be to the argument. If allegiance and protection be reciprocal, then the people cannot be sovereign as stated at page 40, and the States must be, though contrary to what is said at that page; because he conclusively shows, at page 493, that they as States, as bodies politic, protect the citizen.

If the people be sovereign, and allegiance is due them as contradistinguished from a State, as shown at pages 40 and 144, treason can be committed against them only. Now, will Mr. Stephens tell us how they can punish it? A State, or the United States, may protect a citizen and punish him for treason, but it must be treason against the party punishing. But there can be treason against neither, if not sovereign; nor can allegiance be due the people, because Mr. Stephens admits that it and protection are reciprocal,—and they do not protect,—and still Mr. Stephens says in several places they are sovereign. We think it will appear to the reader by this time that sovereignty and allegiance do not pertain to the people, as contradistinguished from the bodies politic known as States or United States, and such bodies, he says, are not sovereign. So they do not belong to the people, organized or unorganized. Then where do they belong? Cautiously answers Mr. S., "Somewhere."

And this brings us to the true and only question there can be in the case. Do they belong to the States or to the United States?

It is not, nor can it be, disputed, that allegiance is due to sovereigns only, and that treason can be committed against

them only; and, therefore, when the Constitution says, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort," it says that the allegiance of the citizen is due the United States as a sovereign.

There is no question here about reserved powers or unconstitutional acts of Congress; for it is an express provision in the Constitution, unlimited in its terms. And if the United States have a government, as is admitted, and as has been so abundantly shown, no power can absolve the citizen from such allegiance or punishment for treason.

Mr. Stephens, at page 194, says:

"It is perfectly competent for sovereign States to make an 'agreement' to punish for treason against them all 'without compromitting their sovereignty.'"

Whether that be true or not, it would be competent to grant such power to another government, which the United States is.

On the same page he says:

"There is in the Constitution no covenant or delegation of power to the Congress to define or punish treason generally, as all sovereigns, without doubt, have power to do."

When the Constitution says that Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States," etc., the omission alluded to by Mr. Stephens was supplied; and Congress has, accordingly, passed all necessary laws long since to punish all treasons that can be committed against the United States, and if *any* can be committed it is evidence of sovereignty in the United States.

Treason, however, is defined in the Constitution itself, which also declares "that Congress shall have power to declare the punishment of treason."

Mr. Stephens further says:

"That [the power to define and punish treason] is left with the States severally [treason against the States, but not against the United States], and a solemn compact entered into that all persons charged with treason against any one of the States, fleeing into another State, shall, upon demand, etc., be given up, etc. This shows clearly that the general allegiance of the citizens of the several States was not intended to be transferred, by this clause of the Constitution, to the United States."

Whether allegiance was transferred from the States to the United States will be noticed hereafter, and was shown when we showed that sovereignty was so transferred. If not transferred in terms, it cannot shake our position; as by the Constitution—as plainly as it can be written—treason against the United States may be committed, and, therefore, the conclusions of accompanying sovereignty and allegiance must follow. If it be true that treason may be committed against the States, it does not follow that it may not be against the United States also. We may argue as to what is the law on principle when there is no written law; but when the Constitution says treason may be committed against and punished by the United States, that ends argument, because the written repeals all common law and law of nations on the subject.

The sophists say, allegiance and sovereignty cannot be divided. If that be true, there is an end of State sovereignty; for the Constitution says treason can be committed against the United States, and all admit there can be no treason except as against sovereignty.

If we test it by protection, we shall find that the United States, by her courts, can issue the writ of habeas corpus to protect the liberty of the citizen, can give judgments and decrees to protect his property, and to insure security, and to protect his life; can punish crimes committed, and by her flag can protect him all over the earth; while the State cannot extend her arm beyond the shore-line. Indeed, beyond the seas, he is known only by the proud title of a citizen of the United States. Nay, the United States can protect her citizens against the laws of their own States. If a State pass a law impairing the obligation of contracts, or an *ex post facto* law affecting his person, or any other unconstitutional law infringing the rights of person or property of a citizen, the United States courts will declare it void, and protect him from the law of his own State.

If there can be but one sovereignty, one allegiance and government against which treason can be committed, it is plain it is the United States.

Mr. Stephens would endeavor to escape from this reasoning by saying the United States means "the States united," and that treason is committed against them jointly or collectively, and, therefore, against the States as States. This cannot be; for we have shown, by authority of Mr. Stephens and Mr. Calhoun both, that the United States is itself a State,—a nation,—another State or nation besides *the* States. And

when the Constitution says that treason can be committed against this other State or nation by its proper and well-known name, who but a secessionist would have the boldness and—if respectful—the audacity to say it is treason against a collection of other States, although this nation may have been misnamed, as we will show in another place?

It cannot impair the force of this argument to say that the Constitution was made by States; so the United States be a nation or State is sufficient for our argument, let it be made as it may.

Mr. Stephens may arbitrarily lay it down that treason against one independent State is treason against all; but it can no more be than the shooting of one man is the shooting of thirteen.

Pages could be filled showing the absurd consequences of his doctrine. The above must suffice, as we know it will be sufficient for all unprejudiced and fair minds, and we care to address no others.

To interpret the Constitution by its own terms and meaning, and not by fictions and rules applicable to other and very different governments, each government—State and United States—is partly sovereign, and to each of which the citizen owes a divided allegiance. We have shown that the most important attributes of sovereignty have been granted to the United States; all the rest are reserved to the States, therefore they are necessarily divided. Treason may be committed against the United States, but it is only one kind of treason,—levying war and adhering to her enemies. All other treasons must be against the States; and they may make as many crimes treasonable as they choose.

Nearly half the crimes in England were, at one time, treasonable; and since the time of Edward the Third there have been seven offenses treasonable: so the offenses of treason may be many. It is the same with protection, the United States protecting in some cases and not in others.

Whatever rules civilians may lay down as national law, cannot affect the written law of the Constitution if it be plain, and the above facts are incontrovertible. Explanations make ambiguities when there are none *to explain*. And if the Constitution lays down a principle unknown before, it is nevertheless as true as if it were in accordance with national law.

The doctrine, however, of divided or incompatible allegiance, is recognized by civilians. By the English law a subject born in the king's dominions could not abandon his allegiance by expatriation, and yet he would owe local alle-

giance to any other country in which he might chance to live; and if England and such country should be at war, his two allegiances would conflict. As Lord Hale said, it would "entangle him in difficulties;" and Blackstone says, by such allegiance the subject "may be entangled by subjecting himself" to two allegiances. See Bowyer's Universal Law, 181; 1st Blackstone, 376; Fort, 185. And if the people of the United States have entangled themselves with two incompatible "allegiances," it was their own folly. They have, however, committed no such folly. The conflict was anticipated and provided for in the Constitution; for it says, too plainly to be disputed, that making war on the United States by a citizen is treason, and equally as plainly that the Constitution is the supreme law, anything in the State laws to the contrary notwithstanding. Therefore, the States, by laws, Constitutions, or ordinances—which are but State laws —may declare to the contrary, and the Constitution will remain the same. The Constitution by consent of the States and people declares it shall be treason to levy war against the United States, without limit or exception. If there be limit or exception, let those who hold the affirmative show it; for there is the grant without reservation.

But, says Mr. Stephens, the States are ultimately sovereign, not as to this or any other grant in the Constitution. You cannot deny the grant, and the United States could as well absolve a State traitor as a State could absolve a traitor against the United States; and if the allegiances conflict, the Constitution says which is to give way. There is here no question of an Act of Congress being in pursuance of the Constitution; the Constitution itself says it is treason.

Apart from the want of power in one State to take in pieces the government of another, there is no principle of public law, or any other law, that will justify the retraction of a grant so solemnly made, be it made by the States or by the people thereof, as the Constitution of the United States.

Mr. Stephens puts his claim of ultimate sovereignty for the States or people—we hardly know which—on the ground that sovereignty was never parted with by the States, that "not a word was said about sovereignty or allegiance." Therefore it is admitted if it had been granted in terms, "ultimate sovereignty would have departed from the States." Is not the reader satisfied that the most important attributes of sovereignty have been granted the United States? If the grant of sovereignty in terms would have vested "ultimate sovereignty" in the United States, why will not the grant of

its most important attributes vest it *pro tanto*, at least, in that government?

In deference to Mr. Stephens, we have used the adjective "ultimate," but do not understand why one sovereignty—be it State or United States sovereignty—is not as much ultimate as another.

We can understand how ultimately it may be necessary to appeal to the people to *confer* sovereignty, but, when conferred, we cannot understand why one is not as ultimate as another, nor why one ultimate sovereignty cannot do as it pleases, as well as another. Great are the mysteries of sovereignty in the hands of sophists, and they do indeed make it "a puzzle," Mr. Stephens!

We can understand, if Mr. Stephens's premises were true, how two sovereignties, having no superior, coming in conflict, each would have a right to judge; but we cannot, with any given premises, understand how in such case one State can judge it has a right to resist the law, and the others or the United States have not a like right to judge they have not; nor can we understand why one side may not fight for its opinion as well as another. It seems, though, according to the sophists, that in such a crisis the seceding sovereignty must "be let alone."

The question has often been asked, and properly asked, What was the citizen to do when the United States commanded one thing, and his State another? The civilians above tell us such "entanglements" have existed before in cases of divided allegiance, and they have happened and will again happen in the case of disputed boundaries. The Constitution, formed by the States, and ratified by the people of each State, anticipating such an obvious conflict, provided in terms, as plain as language could put it, that to war against the United States would be treason; and those who took up arms against the United States did it knowing the consequences, which should never have been risked unless the emergency had justified revolution; and the usurpers—who we will show in the end were usurpers—who drove and those who taught the people they had the right to take up arms against that government were both wrong, though not in the same degree. It was not only bad faith in the State governments, but they had no *right* to command the citizen to take up arms against the United States after they had, *as States*, consented that the people should declare it, as they did, to be treason. And if there were any force in all Mr. Stephens's dogmatisms about sovereignty, and ultimate sovereignty,—nay, if

they were correct principles of public and national law, they are repealed so far as the States and the people of the United States are concerned, in the most solemn manner that a repeal could be made.

It is admitted that the people under the colonial government were not sovereign. Has Mr. Stephens asked himself how and when they became sovereign? They formed State governments before the Declaration of Independence, and the States as bodies politic were declared *sovereign* and independent. If the *people* of the States became sovereign, it could only have been because they ordained such governments; then, we ask, why did not the ordination of a government of the United States make the people of the United States sovereign also? If the delegation of sovereign powers "to this set of agents" made the States or people thereof sovereign, why did not the delegation of superior sovereign powers to "another set of agents" work like magic in making the United States or people thereof sovereign also?

CHAPTER V.

THE GOVERNMENT OF THE UNITED STATES IS NOT STRICTLY A CONFEDERACY OR FEDERAL GOVERNMENT, AS CONTENDED FOR BY MR. STEPHENS.

Mr. Stephens admits at pages 168–9, 300, and 480, that Federal and Confederate governments are the same, and at page 526 that all Confederate governments are founded on "the principle of voluntary consent;" and that De Tocqueville says that all former Federal governments reserved to themselves the right of ordaining and enforcing the execution of the laws of the Union, enforcing them, however, against the States instead of the people. And Mr. Stephens says in several places, it is a government of and for States.

He and all other writers on the subject which he quotes say it is entirely a new principle that the government of the United States should operate on the citizen instead of the States; and we hold it is this new principle that prevents its being a Confederate government.

The distinguishing feature of governments founded on

what is called the social compact, and confederacies, is that the former, like the government of the United States and of each State, operate directly on and govern the people, and the latter, like the old confederation, govern the States. The former execute laws; the latter, compacts. Laws are ordained and established by commands of the Legislature; compacts, by the voluntary agreement of the States.

The previous discussion of the other propositions of Mr. Stephens—particularly the one that the Constitution is a compact—makes it unnecessary to elaborate the one now in order; for if the Constitution be not a compact, the government cannot be Federal, or a confederation. We will, therefore, notice only a few of the reasons given by Mr. Stephens why the United States government is a confederation. And as more of these reasons are collected, beginning on page 191, than anywhere else, we will take them in review.

Quoting from the Constitution, Mr. Stephens says (italics his), "Representatives and taxation shall be apportioned among 'the *several States.*'" The framers of the Constitution, finding the country divided into the political divisions of States, used them for convenience; and as the States were surrendering to the United States all or at least a portion of their sovereignty, it was but reasonable they should provide for fairness and impartiality in the administration of the new government about to be adopted. For if entire sovereignty had been retained, and the Constitution was such a rope of sand as the sophists would make it,—to be broken at pleasure,—such provisions would have been unnecessary; and if they mean anything, they mean that the States had parted with those attributes of sovereignty which Mr. Stephens says they retained when he says they retained their entire sovereignty.

The important question in Mr. Stephens's extract from the Constitution, as bearing on this point, suggests the inquiry, Are taxation and representation apportioned by consent of States, or by law? And if the taxes should not be apportioned as the Constitution provides, does the suffering State call on its confederates to apportion them constitutionally? If the Constitution be a compact, by which the States have a right to call on their confederates to fulfill their covenants, the aggrieved State, in the case supposed, would have to appeal to its co-States, only, for redress.

And this is Mr. Stephens's view as given in his Union speech at Milledgeville in 1860, and repeated in his "Reviewer Reviewed" at page 10, where he advises what should

have been done for a violation of the fugitive slave law by the free States.

He says, "By the law of nations you [the Legislature of Georgia] would have a right to demand the carrying out of this article of agreement, and I do not see that it should be otherwise with respect to the States of this Union. . . . The States of this Union stand on the same footing [towards each other, of course] with foreign nations in this respect." He then proceeds to describe how, if the general government and England were in such a crisis, it would be conducted diplomatically. If this be the proper way to proceed for a violation of one section of the Constitution, it would be for all; and all the statutes enacting laws to carry out the Constitution are therefore wrong. The fugitive slave bill was unnecessary and unconstitutional if the government be such as described by Mr. Stephens, and the State-rights men in Congress should have opposed its passage instead of voting for it. Indeed, if Mr. Stephens be right, there was no necessity for any provision in the Constitution that Congress should pass all laws necessary to carry it into effect; for, it being a compact between the States, they could by diplomacy and war assert their rights under it.

If the Constitution be a compact to be enforced by the States, why was jurisdiction given to the United States courts in "controversies between two or more States"?

If, however, the Constitution be, as we say, a fundamental law on which the government of the United States is founded, and which government operates directly on the people, the grievously taxed *citizen*,—for the United States coerces or operates on citizens, as Mr. Stephens admits, though he says it is a government of and for States,—the aggrieved *citizen*, we repeat, would bring his case before the courts of the United States government, as he would before a State court in a like case, declaring the tax unconstitutional because not apportioned as the Constitution directs.

The reader knows the former mode of redress never has been adopted, nor can be according to the true theory of the Constitution; for it is admitted by all that the United States or the States cannot execute either a law or compact on a State: and to that end a State as such cannot be sued, much less warred on, though the people who resist may, without regard to the authority under which they may act.

If there be anything universally admitted by secessionists and State-rights men, and abundantly in Mr. Stephens's book, it is that the Confederation was abandoned to avoid

pursuing the very course suggested in his Milledgeville speech and re-asserted in his "Reviewer Reviewed." There is a boldness in the contradiction both startling and amusing, and only to be accounted for because of the general uncontradicted monopoly of the press and stump by secessiondom south of the Potomac.

Says Mr. Stephens, "*Each State* shall have at least one Representative;" and, Mr. Stephens, so has each county in Georgia, and, we presume, every county in the Union. As the States surrendered their sovereignty and State rights as confederates, it was but reasonable to compromise by giving each two Senators. Besides, it was a convenient mode of making a Senatorial branch. Mr. Stephens's logic is that because of such representation an ordained and declared law to the people is made a compact between States. If they represented separate confederates, the latter would have a right to say whom they would send to the Congress of sovereigns,—as Mr. Stephens would have it. But, as Congress is a law-making instead of a treaty-making body, it admits and rejects such Senators as it chooses.

It may be answered by the sophists that the Constitution provides that the Senate shall be judges of the qualification of its members. But such concession would never have been made by confederates in a league, treaty, or compact. For the Confederation had not only the right to send their own delegates without restriction, but to recall them "at any time within the year and to send others in their stead." Each State maintained its own delegates, and the vote was taken *by States*, as it should have been between equals making compacts. But as the Congress under the Constitution is a law-making power, the vote in the houses is by Representatives and Senators—those from the same State often voting differently.

"When vacancies happen '*in any State*,' etc., the executive authority shall issue writs of election." A similar provision is made in the Constitution of each State of the Union.

"The Congress shall have power to regulate commerce with foreign 'nations and among the *several States*.'"

Because the States have all the reserved powers of taxation, as well as other powers not granted the United States, it was apprehended very reasonably that they might use them unjustly against some States, or to the embarrassment of the laws of the United States; and therefore, reasons Mr. Stephens, that shows the Constitution to be a compact, and the govern-

ment Federal. We cannot see it, Mr. Stephens, and presume the reader cannot. Indeed, Mr. Stephens seems to think that as the States exist at all they can exist as a simple and unmixed Confederation only.

Because the African slave-trade could not be prohibited before 1808 against the consent of any *State*, it is given as another reason why the Constitution is a compact, and the government a Confederation. As this section prohibits *Congress* from arresting importation, there can be no pretense that it is a compact between States, but only a law *to Congress*. It is such a prohibition on legislation as all State Constitutions have imposed on their Legislatures, and which can be, and constantly has been, enforced by the courts.

Mr. Stephens's case must have been desperate, to catch at such a straw to prove the government Federal. Every one knows that the importation of Africans was so important to some States that they would not have entered the Union unless the above provision had been made. Like the provision about Senators, instead of proving the government Federal it proves the contrary; because it shows there had to be a consideration given for relinquishing the advantages—in some cases—of the old system. For if the government was to have remained Federal, a State could at any time have seceded and brought in as many slaves as it might choose, and the above provision would have been unnecessary. No one ever dreamed, until the birth of secession, but that the African slave-trade was forever closed, and that it could at any time have been opened by secession.

"No preference shall be given," etc. "to the ports of *one State* over those of another," etc. "Nor shall vessels, bound to or from *one State*, be obliged to enter, clear, or pay duties in another." Like the one just commented on, these provisions are only laws to Congress. Mr. Stephens, however, by his italics, seems to think because the *existence* of States merely was recognized, it makes the Constitution a compact between States, and the government a pure and simple Confederated Republic; whereas it only shows that the States, having abandoned their nationality, were providing indemnities for the loss of such security against partiality.

"No State shall enter into any treaty," etc. Suppose, Mr. Stephens, a State should enter into a treaty: what then? Why, if the Constitution be a compact, and the government a Confederation, the other States should call on "the derelict State" to secede from, or in some way abrogate, the prohibited treaty. But, as we have a government of the United

States, one of the fundamental principles of which is the above clause of the Constitution, it would disregard the treaty; and if the foreign power treated with should complain, the United States would show the Constitution and make an end of it; and if the foreigner should persist, the United States would go to war with it, if necessary, to enforce the Constitution as one of her fundamental *laws*. If this clause proves anything, it is that the States have given up the sovereign right to make treaties.

Mr. Stephens, in his letter to Mr. Greeley, repeats an idea in his book—that the States are sovereign, and the government Federal, on account of the equality of representation in the Senate; and says, in the former, that "no law can be passed by the Congress if a majority of the States, through their 'ambassadors' in the Senate, object."

Mr. Stephens forgot that two-thirds, and even a majority, of the Senators, could pass an act in defiance of objections by the minority, which could not be done if each State were an independent sovereignty, the Constitution a compact, and the government a Confederacy.

It is incompatible with a Confederacy that Delaware should have almost no influence in the House of Representatives and in the executive branch of the government, compared with the large States. If sovereigns in the compact, they should all be equal.

Mr. Stephens, in the same letter, repeats what he so often says in his book, that ours is "a government of States and for States," . . . . "and not a government in *any sense or view* [italics his] for the masses of the people of the respective States in their *internal* and municipal affairs." We cannot see the consistency of this with the fact admitted by Mr. Stephens—that the new, or present, government was made because of the wish to obviate the necessity of coercing a State; or with the fact that a State, as a State,—a political body, as defined by Mr. Stephens,—has not been, nor can be, coerced; or with the other important fact, that it has governed the people of the States—and nothing else—in their internal affairs. The United States government punishes the people of the States for crimes, gives judgments against them for debt, and issues writs of habeas corpus to give them liberty. Mr. Stephens says it is "with limited powers directed to specific objects." So have the States limited powers that they cannot transcend.

We will not tire the reader by making the same comments on the other sections of the Constitution, quoted by Mr.

Stephens, in which the word "State" happens to be mentioned. Before leaving the subject, we will sum up Mr. Stephens's extracts from the Constitution and ask the reader to notice whether they be compacts or laws does not depend on the fact, as before noticed, whether their obligations depend on the pledge of the good faith of the States or of the enforcement of the Constitution and laws of the United States by its courts. If on the former, the Constitution is a Federal or Confederate league; if the latter, it is a fundamental law of a national, or, as Mr. Stephens improperly calls it, consolidated, government.*

"Representation and taxation shall be apportioned among the *several States*."

"*Each State shall have at least one representative*."

"When vacancies happen in any *State*," etc.

"The Congress shall have power to regulate commerce with foreign nations and among the *several States*."

"The migration and importation of such persons as any of the States," etc.

"No preference shall be given," etc. "to the ports of *one State* over those of another," etc. "Nor shall vessels bound to or from *one State* be obliged to enter, clear, or pay duties in another."

"No *State* shall enter into any treaty," etc.

All these are fundamental principles of the *government* of the United States, that the Congress is sworn to observe and carry out. And if it or a State should pass a law violating any one of them, the courts would declare it unconstitutional and void; but if the Constitution, instead of ordaining and establishing them as laws, had only pledged the faith of the States to the observance of the compact, as under the Con-

---

* The reader has no doubt noticed that when one reaches the infirmity of second childhood, or dotage, the master-passion or peculiar idiosyncrasy of temper seems to override the other faculties, and the subject often becomes insane on that line. And we apprehend if Mr. Stephens ever reaches such a stage of infirmity, his insanity will develop itself in a dread of "consolidation," "centralization," and "imperialism." Already they seem to be as much in his way as were King Charles and his head in that of Mr. Dick. As Mr Dick's memorial, no matter how begun, always ended with the king or his head, so with Mr. Stephens: he always runs into one—sometimes all—of the above horrid words, commence as he will. Indeed, this has been an infirmity of the Democracy—out of power—from the days of Mr. Jefferson down. Let any one, other than a Democrat, be President, and lo! the country is on the brink of consolidation and imperialism. The prophetic alarm has become as stale as that of the Millerites.

In ante-bellum times the additional bugbear of a negro insurrection was quadrennially held up to the affrighted voters of the South, just before each Presidential election; but that being now a dead issue, the necessity requires a double use of the aforesaid ugly words.

federation, Mr. Stephens might be right; but to say that because States exist, and are recognized as political divisions and for many other important purposes, therefore the Constitution is a compact, and the Government of the United States, acting on the people alone, a Confederacy, is a *non sequitur* not to be assented to by any logical mind.

Mr. Stephens concludes by saying, "Nothing appears more prominent in the whole instrument than States." And how could it be otherwise, when the Constitution, finding these political divisions already made, and having to use them, chose these rather than make others? Turn to the State Constitutions, and the counties will be found used in the same way as political or civil divisions. The States may well be recognized as existing otherwise than as sovereign parties to a compact, or as members of a pure and simple Confederation.

Mr. Stephens comments on names, such as "Congress of the United States," "United States," "States United," etc. The names may or may not be very apt, but it is certain the name cannot change the thing. If Mr. Stephens indorsed a deed conveying lot No. 1 as a deed for No. 2, it would still be a deed for the former, notwithstanding the misnomer.

We think that neither is the proper name, as *the States*, as political bodies, were disunited so soon as the Constitution went into operation. Let not the reader be startled at what may seem a bold if not a rash declaration. If he will let his mind have fair play as if he had never been misled by a name, he will agree with us, if our theory of the government be right.

That the States under the Confederation were united in a league, no one denies; but that league was superseded by the Constitution acting on the people. There was, after the Constitution, no use for a league of mutual defense, as the United States took charge of all foreign intercourse, and protected all the people. Indeed, the Tenth Section, First Article, prohibited any State from entering "into any agreement or compact with another State." On the dissolution of the union of States under the Confederation, the union of all the people under one government was substituted, and the proper and apt name would have been *The United People* of America.

Indeed, there is now no union of States to secede from. If the union of the people had first been formed, and *after* that the State governments, and each with exactly the same powers as under the Constitution, no one would ever have

thought of calling the States, or the General Government, "the United States" or "States United," though they might have borne exactly the same relation to each other as now. That is the way governments within governments—such as municipality and corporation governments—are always formed; and what has created the "puzzle" is that our system was formed by beginning at the other end from that which had been usual,—the lesser governments making the greater, instead of the greater the lesser.

Let those who hold contrary to us show any union of *States* since the Constitution; we have shown *the Constitution* makes none. It could not be made without an agreement, and the Constitution says that cannot be done without consent of Congress. Neither the agreement nor Act of Congress giving consent can be shown. Under "the Confederation" the league or compact of union was appropriately named "the United States," and, though that has been changed and superseded by a union of the people, the old and familiar name has been retained.

The States not only exist, but exist independently of each other and of the United States, though the laws of the latter govern the people in all the States in the manner and form limited in the Constitution.

We are more ultra for State rights and independence than Mr. Stephens. For we not only hold that the States may secede, as we will show, but that no secession is necessary, as they are not, under the Constitution, united as bodies politic. He holds the government to be "of and for States," and we hold that the States, as States or bodies politic, are not governed at all, unless government of the people in the States is such, and this both Mr. Stephens and Mr. Calhoun declare not to be inconsistent with State sovereignty and independence. (See pages 194, 381–2, 485–7.)

We, however, are for the independence of the United States as well as of the States. Mr. Stephens holds that the States are not only independent, but have power to destroy the United States government at pleasure. Let Mr. Stephens not vaunt that he is the champion of State rights on the outer wall of the Constitution guarding that sacred instrument, for he is rather the assailant, and, though discharging paper bullets, a dangerous one. But, thank God, it has stood iron hail undemolished, settling deeper and firmer into the soil of this North American continent. The people made it by ratification, and on this rock the Constitution is built, and the gates of hell shall not prevail against it.

Pure and simple confederate republics are formed only for strength and protection to the members of the confederation. Therefore, as the Constitution had imposed the duty of protection on the United States, had given it power to raise armies, build navies, and collect revenue from the people, without any contributions from the States, there was no need of such a government as a confederation. There was a union of States under the Confederation, because the States as bodies politic pledged one another, and agreed with one another, to furnish—each State—men and money for the common defense. But the Constitution was a union of the people, because it ordained and established a law that the people—each for himself, as the Constitution was ratified—should contribute taxes, and serve in person, to defend the United States, thereby defending the whole people of the United States.

Finally, on this subject, why all this catching at straws to prove the Government federal and the Constitution a compact, when its terms are before us in good plain English, that needs only to be read as good sense should read, to see it is declared and ordained as law, just as the State Constitutions declare; and when if one makes a consolidated government, so does the other; and when, that we may have an example of the terms in which a Confederacy is written, we have the old Articles before us, showing how it differs in this main feature from the Constitution of the United States?

CHAPTER VI.

"EACH STATE, FOR ITSELF, HAS" NOT "THE RIGHT TO JUDGE OF INFRACTIONS OF THE COMPACT AS WELL AS THE MODE AND MEASURE OF REDRESS."

Mr. Stephens's next proposition which will be noticed is thus stated:

> "Each State, for itself, has the right to judge of infractions" (of the compact) "as well as the mode and measure of redress."

If the Constitution were a compact only between sovereign and independent States, we would not take issue with Mr. Stephens; but as it has been shown to be a law only, and is

admitted by the sophists themselves to be a law and a compact both, it is denied that each State, for itself, has the right to judge, etc.

It is admitted by Mr. Stephens and Mr. Calhoun that the United States is a State or nation with all the functions of a government, though called so often by them an agent.

Mr. Calhoun admits at page 379 that it is a power incident to all courts to decide a law of their government unconstitutional; and it is admitted by him and Mr. Stephens both, that it is competent for a State to subject its citizens to the laws of a foreign State. (See pages 381, 382, 485, 487.)

We agree that the United States is a complete State or nation, whose laws operate on all the people of the United States, and that her courts, like the courts of all States, have the right to judge of the constitutionality of her laws. It follows "from the nature of things" that the courts organized to administer the laws of a State are the proper judges of their constitutionality.

Their claim for the State courts to judge, too, we will give in Mr. Calhoun's own words in answering Mr. Webster:

"Admit, then, that the government has the right of judging of its powers, for which he contends. How then will he withhold upon his own principle the right of judging from the State governments? If it belongs to one, on his principle, it belongs to both; and if to both, when they differ, the veto, so abhorred by the Senator, is the necessary result: as neither, if the right be possessed by both, can control the other." (Page 373.)

The first answer to Mr. Calhoun is that he forgot he was arguing about judging *a law*, and not a compact; for the right to judge, as between States, is of compacts only, according to his premises.

If there were any doubt about the discussion being concerning *laws*, it is made plain in his next paragraph, when he says:

"No one has ever denied that the Constitution and the *laws* made in *pursuance* of it are of paramount authority. But it is equally undeniable that *laws not* made in pursuance are not only not of paramount authority, but of no authority whatever, being of themselves null and void; which presents the question, who are to judge whether the *laws* be or be not pursuant to the Constitution." (Page 373: italics ours.)

His doctrine of nullification was based on the right of South Carolina to judge of tariff laws.

By such fallacy on fallacy, before exposed, a fundamental law was made into a compact between States; and now, when Mr. Calhoun and Mr. Webster are discussing the right of

judging *laws*, the former is thrusting forward principles applicable to compacts only. For the premises of the sophists are that in *compacts* between parties, each party has the right to judge, etc. As Mr. Calhoun said of the Supreme Court, it "results from the necessity of the case" that the courts of all States are the proper judges of their laws. Has any one ever denied—does Mr. Stephens deny—that when speaking of the constitutionality of laws it is not meant according to the Constitution of the State whose laws they are?

Mr. Calhoun has admitted that the courts of a government have a right to judge of the constitutionality of its laws, and, of course, not the courts of another State. The United States is admitted to be a State. What a howl would have gone up from Mr. Calhoun and South Carolina, if Massachusetts or any other State had assumed the right to judge of the constitutionality of her laws!

The case supposed is the giving judgments within the jurisdiction of the United States by her own courts, in administering its laws, and not as to the right of such courts to judge of some agreement between two States.

Under the Articles of Confederation there was a mode of arbitration provided to settle disputes *between States*, which Mr. Stephens in the plenitude of his latitude in naming things calls a court or judiciary, we forget which, though it had no jurisdiction over a single individual in the Confederacy. And few things show the difference between the old and new governments more: the former as a league between States should have provided for disputes between *States* only, by arbitrators; the latter has judges, juries, clerks, marshals, and records, because it is a government with courts enforcing laws. The arbitrators may be called judges, but still they were judges of compacts between States.

Mr. Calhoun forgot another important matter: that the right to judge, according to the premises of the sophists, is because *each State* is a *party* to the compact. If we can imagine the absurdity of the Constitution being a compact, we must see it is not one between the United States and the States, because the former was not in existence until after it was made. Now, does not the reader see the absurdity—if the great "unanswered" did not—of applying the right of a State (the United States) to judge of its own laws, to that of two or more States to judge of a compact to which they are parties? The parties to a compact must be in existence before it is made. What part had the United States in making the Constitution, when the Constitution first made it?

Mr. Stephens, at page 496, speaking of the violation of compacts by nations, says, "This by universal consent may be rightfully done, when there has been a breach by the *other party* or parties." (Italics ours.)

The reader will remember that all the violations of the Constitution complained of—with one or two exceptional cases—have been of laws passed by the Congress of the United States, such as the alien and sedition laws, the embargo laws, the Missouri Compromise, the purchase of Louisiana, annexation of Texas, tariff laws, and the law for the arrest of fugitive slaves, etc.

To arrest the alien and sedition and tariff laws, this great secession principle of judging of the violation of the compact *by one of the parties to it*, was invoked with the most violent pertinacity.

Now, if Congress—or rather the United States government—was not a party to the compact, there could have been no violation of it by a "*party to it*" by passing the above laws.

Let us treat the Constitution as the compact, and the government built thereon as the "agent" of the States—as Mr. Stephens and Mr. Calhoun have it—to carry out the compact. Then, if the agent do an act, it is as binding as if done by the principals themselves; and if he do an unauthorized act as common agent, it is no violation of the compact by one principal more than by another. So if the agent pass an unconstitutional tariff, one principal can no more arrest it than one can revoke a deed made by the joint agent of thirteen principals; nor can one secede by charging another principal with the violation of the compact by the common agent.

Suppose the sophists had these difficulties out of their way, and Mr. Calhoun could with reason have propounded the question which he so triumphantly put to Mr. Webster when he asked, "How, then, will he withhold upon his own principles the right of judging from the State governments, which he has attributed to the general government?" there are others in the path equally embarrassing. For the answer to his question is that he admits it to be a right of the courts of a State—the United States being a State, as admitted—to judge of the constitutionality of its own laws. And why not the right of the United States, as well as of any other State? and if so, that court only can, in administering them, judge United States laws. Who before ever pretended that the courts of a nation or State, in the administration of its

own laws, were not the proper and only interpreters of its Constitution and laws?

It is no government that cannot interpret and administer its own laws, and has thirteen—nay, thirty-six—interpreters besides its own.

The idea that such sages as those who framed the Constitution should have incorporated into it the principle that any courts but those of the United States were to judge in the administration of its laws, and when it said laws made "in pursuance of the Constitution" it did not mean as interpreted by its own courts, is an absurdity too gross for anything except secession fanaticism.

The laws of States are not only their written statutes, but also the interpretations put on them by their courts. Those interpretations make up the great body of laws of each State, and of the United States; and no other but the courts of the respective States can make such laws; and when made they are as emphatically the laws of the States as the statutes. Georgia cannot by the decisions of her courts make laws for Alabama, and much less for the United States. The Supreme Court of Georgia said, in Padelford & Fay *vs.* The Mayor of Savannah (14th Ga. Reports), the United States courts could not make a precedent for that court, and of course *it* could make none for the courts of the United States: then, when you wish to know what is the law of the United States, you can learn it only from its statutes and decisions of its courts.

Mr. Calhoun, in admitting that the United States courts had the power of declaring its laws unconstitutional, of course admitted that the same courts could declare them constitutional; and when, in discharge of that duty, they so declare, such decision becomes the law of the United States, and any State court deciding to the contrary leaves it as much the law of the United States as before; just as a judgment of a court of South Carolina as to the constitutionality of a law of that State will remain the law, anything decided by a Georgia court to the contrary notwithstanding.

Suppose, however, the State courts persist in giving judgments contrary to those of the United States. The framers of the Constitution saw and provided for this emergency, for there was nothing in the working of the system so apparent as this conflict of jurisdiction. And they intended to provide, and did provide explicitly, for the difficulty, when they said, in the Sixth Article, that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under

the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Of course Mr. Calhoun underscored the word *pursuance*, as all the sophists do when answering this article, and said that "laws *not* made in pursuance are not only not of paramount authority, but of no authority whatever, being of themselves null and void." We agree with Mr. Calhoun, and wish it recollected that such laws, when so pronounced by the proper court, are "null and void," as we shall have use for the admission before we conclude.

When Mr. Calhoun admitted that the United States courts had a right to pronounce a law of Congress constitutional, he admitted their right to say it was a law of the United States in *pursuance* of the Constitution, and which we showed above when we proved that "the constitutionality of a law" always had reference to the Constitution of the State which passed the law, as pronounced by its own courts.

The practice of the government has conformed to this view, as, from the beginning, the United States courts have declared even the laws of the States and judgments of their courts void, if in conflict with the decisions of her courts, and enforced them by the proper officers uninterruptedly—with a few special exceptions to be noticed—until the late "mode and measure" was attempted.

We have shown that the decisions of the courts of a State or nation make its laws; that such are the proper courts to declare them made in pursuance of its Constitution, be such decisions right or wrong; that Mr. Calhoun has admitted the United States courts are the proper tribunals to decide its laws, and that he and Mr. Stephens both admit that it is a State or nation; and the Constitution declares the *laws* of the United States supreme, leaving their constitutionality, as in all other States, to its own courts.

For illustration, let us take the constitutionality of the tariff laws, to which Mr. Calhoun contended his theory was applicable. They are admitted to be *laws* passed under the Constitution of the United States, and, according to his admission, and what we have shown, the courts of the United States had the right to say whether they were passed in pursuance of the Constitution of the United States: they are laws as exclusively under the Constitution of the United States as the tax-laws of Georgia are under the Constitution of that State, and South Carolina has as much right to judge of the one as of the other.

We admit States have a right to judge of the extent of their respective powers, but each of its own laws and own powers only; and if such judgments bring them in conflict with other States, then nothing—as between sovereign and independent States—can decide but arms. If such conflict were to occur between two of the States of the Union, this would be the case if sovereign and independent; but the Constitution of the United States interposes, in the Second Section, Fourth Article, by saying that the jurisdiction of the Supreme Court shall extend to controversies between two or more States.

So as between a State and the United States, each may have a right, according to the laws of nations, to judge of the extent of their powers, and the courts of each, and each only, to judge when their respective laws are made in *pursuance* of their Constitutions. The Constitution again interposes its law in place of the law of nations, and says the laws of the United States made in "pursuance" of the Constitution shall be supreme, though State laws may be to the contrary. And we have shown that the United States courts are the proper tribunals to judge whether they are made in pursuance of the Constitution.

As the laws of the United States operate on individuals only, there need be no conflict with States unless they seek it. If a State interpose to arrest their execution, the United States wars on the individuals obstructing, without reference to their authority. If the opposition come from a whisky insurrection or a refusal to pay imposts, the power of the United States will be directed against those individuals only in the way of collection. If it were under a Confederation, as was the old government, then, as *States* would be called on for assessments, there would be conflict with States.

If an individual disputes the constitutionality of the laws, —and he only on whom it is about to be executed can dispute it,—the proper court is open to hear him, and any other who interposes, be he State or individual, is an officious interloper, as the United States would be to interpose to prevent the collection of a State tax not conflicting with the declared supreme law.

Mr. Calhoun, while discussing the question as a law, continued to repeat that the Constitution was a compact, with other such like secession platitudes. What, however, he seemed to think was an "unanswerable" argument, was the declaration, in the Tenth Amendment to the Constitution, that "the powers not delegated by the Constitution were reserved,"

etc., and argued that the right to judge, by the States, was one of the reserved powers because it had not been granted.

When he admitted the United States courts had the right to judge of the constitutionality of the laws, he conceded that it was *not* a reserved right.

It is strange that the great "unanswered" did not see the difference between the reservation of powers and the right to *judge* whether or not they were reserved, especially as he had just admitted, without limit, that the United States courts had a right to pronounce United States laws unconstitutional. And why not to judge of their unconstitutionality on account of their encroachment on the reserved powers as well as for any other reason?

If all that has been said is not sufficient to convince the reader that when the Supreme Court of the United States pronounces a law of the same constitutional, it is the supreme law though the State courts judge to the contrary, we think the following will:

The sophists, in their dogmatism, have taken it for granted that when the Constitution spoke of laws made in "*pursuance*" of it, it was synonymous with declaring they should be constitutional. Neither the words used, nor the circumstances under which used, justify such a meaning. The Constitution shows, and Mr. Stephens admits, that the main object was to get rid of the Confederation, because of the danger of a conflict between the States and the United States. The makers of the Constitution saw—as they could not help seeing—that conflicts would be more inevitable than ever, if the conflict of jurisdiction between the United States and State courts were not provided for; and hence they ordained the emphatic law of the Sixth Article. To have left the matter as contended for by the sophists would have insured instead of avoiding conflicts.

By laws "made in pursuance of the Constitution," they meant only to say, laws made as provided for by the Constitution; laws pursuing the Constitution, or coming after it in consequence of the Constitution; succeeding it as contemplated by its provisions; laws made under or by direction of the Constitution. This meaning is conformable to the best lexicographers that we have been able to consult. Webster's definition runs thus: "*Pursuance*—n. (from *pursue*) —a following; prosecution, process, or continued exertion to reach or accomplish something; as in *pursuance* of the main design.

"2. Consequence; as in pursuance of an order from the commander-in-chief.

"*Pursuant*—a. (from *pursue*, or rather from Fr. *poursuivant*) —Done in consequence or prosecution of anything; hence, agreeable, conformable.

"*Pursuant* to a former resolution the House proceeded to appoint the standing committees. This measure was adopted *pursuant* to a former order."

Johnson defines it thus,—"*Pursuant*—adj. (from pursue)— Done in consequence or prosecution of a thing."

Therefore, to apply the definitions of these standard authorities, this part of the Constitution might read thus, to bring out the true meaning: Laws passed in prosecution of the designs of the Constitution; laws passed by command or authority of the Constitution; laws passed in consequence or in the prosecution of the Constitution. All of which mean, any laws passed under the provisions of the Constitution—whether constitutional or not—are passed pursuant to it.

It would not follow, however, that laws passed under such a construction would make unconstitutional laws valid, because, as admitted by Mr. Calhoun, "it results from the necessity of the case" that the proper court may, and should, pronounce on their constitutionality; and, he tells us, the Supreme Court is the proper tribunal to decide on the constitutionality of the laws of the United States.

The case, then, stands thus: All laws—constitutional or unconstitutional—passed by Congress, are enacted pursuant to the Constitution, according to the above definitions. If that be not true, then the United States courts being the proper tribunals to judge of their constitutionality, and by their decision—and theirs only—to make United States laws, it follows, that in the first case *all* laws of the United States enacted by Congress, and in the second, all such laws pronounced constitutional by the Supreme Court, are the supreme laws of the land, any State law or decision of the State courts to the contrary notwithstanding.

We have said we propose to interpret the Constitution, as all laws should be construed, by its terms; but as most of Mr. Stephens's volume under review is made up of what others have said and thought, and what was done, we will be excused for introducing here what was said and done in the Convention on this branch of our discussion.

Three resolutions had been introduced, the last of which, only, was adopted, and reads as follows:

"*Resolved*, That a national government ought to be established, consisting of a supreme Legislative, Judiciary, and Executive."

The account given of it in Elliott's Debates says:

"This last resolve had its difficulties; the term *supreme* required explanation. It was asked whether it was intended to annihilate State governments. It was answered, only so far as the powers intended to be granted to the new government should clash with the States, when the latter were to yield."

No doubt the secessionist, while reading our argument showing that the Supreme Court of the United States was the proper tribunal to judge of the constitutionality of the laws of the same, though the States might decide contrary to it, and that all laws of the United States were made pursuant to it, whether constitutional or not, has been answering in his mind, that nevertheless the States, *in convention*, have the right to judge of the mode and measure of redress.

This brings us to consider the latter part of the double proposition we have just been discussing. But as "the mode and measure of redress" is so intimately connected with the next proposition we shall review, we will consider them together; for secession is the "mode and measure of redress" which, Mr. Stephens holds, Georgia had a right to adopt.

CHAPTER VII.

THE RIGHT OF A STATE TO WITHDRAW FROM A UNION OF STATES, FORMED BY A LEAGUE OR CONFEDERATION, UPON BREACH OF THE LEAGUE OR COMPACT BY OTHER PARTIES TO IT, MAY BE TRUE. THE GOVERNMENT OF THE UNITED STATES IS NOT SUCH A UNION, BUT A GOVERNMENT OF AND FOR THE PEOPLE OF THE UNITED STATES; AND THEREFORE, NO OTHER GOVERNMENT OR STATE CAN ABSOLVE ITS CITIZENS FROM THEIR OBLIGATIONS TO OBEY ITS LAWS.

SAYS Mr. Stephens:

"*The right of each State to withdraw from the Union, upon breach of the compact by other parties to it, springs from the very nature of the government.*"

Nothing has contributed more to make "a puzzle" of the right of the people of the State to resist its laws than the incorrect statement of the proposition on which the right is claimed. If it be meant simply that a State has a right to withdraw from any participation in the Union, we could

agree with Mr. Stephens; but if he means—as he does—that by secession the States have the right to absolve their citizens from obedience to the laws of the United States, then we take issue with him. Practically there is but little difference in the propositions, for it is to be presumed no State would withdraw from the exercise of her rights and privileges, and leave her citizens burdened with an obedience to the laws of the United States. But the difference is all-important in arguing the right to resist; for the simple right, as stated by Mr. Stephens, to withdraw, may be true,—as a State cannot be coerced,—and the concomitant rights, claimed by him, not.

Mr. Stephens bases the right of secession, not on the Constitution, but on the "nature of the government." This cannot be, for it cannot be the nature of any government to admit of its own destruction. There can be no government when its subjects can bid it defiance at pleasure. He should have based the right on the nature of the compact between independent sovereigns.

A treaty, league, or compact is not a government, for, as it relies on good faith only for execution, the parties are not governed. Mr. Stephens lays down one proposition and argues in support of another.

He has admitted, truly, that the great object of the new government was to avoid the embarrassments of coercing States, as under the Confederation; and we have abundantly shown that it can never be done under the former. Even their attempts—and they can be but attempts, according to the true theory of the government, unless successfully defiant as Georgia was—to violate the Constitution, never make it necessary to coerce a State; for all such attempts, when interposed to obstruct the execution of the laws on the people, are declared null and void, and the government proceeds to execute the laws on them without reference to State authority.

The States, as "bodies politic," having agreed to or pledged their faith to nothing, as they did under the Confederation, and the laws operating only on the people, there is neither contract nor law to enforce on *them*. Besides this disability of the government to force these bodies politic to do anything, the States, by simply withdrawing from the Union, but abandon or renounce privileges and rights against which no one has any right, if interest, to complain.

New York may abandon the Union to-morrow, may cease to participate in an election of President or to send members

to Congress; but if she places no obstruction to the execution of the laws of the United States on the people, what can be done? For the reasons stated, nothing. Who will have any right to complain, or any interest in complaining? The United States has nothing to do with her, as a political body, unless the former chooses. The United States has only a right to *govern* the people under her jurisdiction, as any other State governs its citizens. The States, so far as coercing them as bodies politic is concerned, have always, under the Constitution, been independent of the United States. The difficulty has been, the latter has never, until since the late war, been independent of the States. Some of their encroachments will be shown before we are done.

What rights the States may have forfeited by war, not being pertinent to the present inquiry, are not discussed.

The late war was not on secession, but to enforce the laws against the people who obstructed them, and who had seized the public property. It mattered not to the United States who resisted, nor by what authority. If there had been no secession, and the execution of the laws had been arrested, and the public property seized as it was, the war would have been the same as when done in pursuance of secession. On the other hand, if the States had only seceded, and no one had seized the property of the United States or resisted the laws, there would have been no war.

The secession of South Carolina preceded hostilities some four or five months, and no one apprehended the crisis of arms on that account alone. If the war had been against States united under a league or treaty, it would not have ended until there was a new league or treaty of peace.

After resistance ceased, the war did, and the United States did not make it a condition of peace that the ordinances of secession should be repealed; some of them were not repealed until a late day, and we do not know but that some of them may remain still unrepealed. And if the United States fought so hard to prevent secession, surely she would be glad to receive back the erring sisters and place them—as so much desired by them—*in statu quo ante bellum*.

Whatever misconception the reader may have had as to the consequences of secession, he will now be satisfied that it alone did not occasion the war.

The orbits of the United States and the States, as political bodies, are entirely different and independent of each other, except in the apprehended collisions provided for by the Constitution, as before noticed; and they need never have

collided but for the pride, arrogance, ambition, and folly of the secession leaders; for the Constitution, interpreted in its plain and direct simplicity, makes the path plain in which each is to travel. It has been by the perversion of terms and the mystifications of sophistry that there is any doubt as to the great provisions we have been discussing.

Mr. Stephens begins the mystification by misnaming his book "The War between the States," when, if facts establish anything in history, it was a war on the part of the United States. Armies and money were raised, acts passed by Congress, commissions issued, etc., and all in its name. The States beyond the Potomac and Ohio did not as allies do these things, as they would if the government had been a compact and the war one between States.

Even the seceded States did not conduct the war as States, but formed a government for the purpose, which fought the one established at Washington, and which—when challenged to do so—refused to acknowledge the right of a State to secede.

The question is, had the United States the right to govern the people by force notwithstanding secession? If she had, then the war was right on her part and wrong on the part of the seceding States, and Mr. Stephens is wrong in his conclusions.

When the government was established by proper authority, it became as any other government, endowed with "power and authority in *proprio vigore*" to maintain itself as any other State, and no State or collection of States—except by the mode pointed out in the Constitution—had any right to impair or divest its authority.

There has been no reason shown why the United States should be shorn of its attributes as a State or government more than any other, for none shows a more legitimate right to its power, having been formed by the States and by their consent ratified by the people.

But Mr. Stephens, with the sophists, answers this by saying that a resumption of the sovereign powers granted the United States by secession relieves the people of the States resuming from obedience to the laws of the United States. He admits that certain powers, "such as the taxing power, and the power to regulate trade, with the right to pass laws acting directly upon the citizens of a sovereign State, etc.," were delegated to the United States, or, as he terms it, to "the States jointly" or "set of agents." These "States jointly," or "agents," can and do mean nothing in plain

English but the government of the United States. We have shown that the powers "delegated" are *grants;* and if all the States delegated them, "one set of agents," according to Mr. Stephens's maxims, cannot alone revoke them. We have shown also that the Constitution is "a grant" of "vested" powers that are irrevocable, except in the manner prescribed in the grant. If the reader should be of opinion that *still* the States are as sovereign and independent as England and Prussia, the people, according to the admissions of Mr. Calhoun and Mr. Stephens, could not be absolved from obedience to the laws of the United States. For they have admitted that the United States is a State,—a nation,—and that the laws of one State may run into and be executed in another. (See pages 381–2, 485 and 487.) So there could be no objection to the laws of the United States operating on the people of the States if they *were* sovereign and independent. The grant having been made the United States—as Mr. Stephens admits—that its laws should run into the States, their sovereignty is no obstacle, and they cannot revoke the grant without the consent of the United States.

Unlike all other confederate compacts, the United States government is the lion in the path that cannot be blown away by sophistry, myths, or dogmatics. It has grants to levy taxes, imposts, etc., to hold Forts Sumter and Pulaski, and to execute laws on all the people of the United States, that cannot be disposed of without its permission.

Having at a former page promised to elaborate the subject more fully, we must be excused for some repetition of a further notice of Mr. Stephens's maxims and their application here, as they are material to the matter now under consideration.

Suppose the States had the power of revoking the agency and resuming the delegated powers granted, for which Mr. Stephens contends, it should be done according to the rules and axioms laid down by himself. At page 20, speaking of the Convention of the State of Georgia which had agreed to the Constitution of the United States, he says "it required the same power to unmake as it had to make it," and cites for authority Noy's Maxims, which states this one thus, "Everything is displaced by the same means it is constituted;" and the Institutes and Broom, which have it, "Nothing is so consonant to natural equity as that every contract should be dissolved by the same means that rendered it binding."

At page 40, Mr. Stephens says, again, "But whatever is

delegated may be resumed by the authority delegating. No postulate in mathematics can be assumed less subject to question than this."

According to Mr. Stephens's own maxims, inasmuch as the powers of the Constitution were jointly delegated to a joint agent by a joint act, the resumption and revocation should have been by a like joint act of all the States, or by amendment as prescribed in the instrument. This proposition is not embarrassed by any supposed compact, because the appointment of an agent with powers delegated—or granted, as it should be called—has no pretense of being a contract. Or, as Mr. Calhoun said, it was ridiculous "to call an individual appointed to execute the provisions of a contract, a contract."

Mr. Stephens by "delegated" can mean nothing but "granted" powers, for at page 145 he treats the terms as synonymous, and says the *States* had "delegated powers," which no one pretends can be withdrawn at the pleasure of any voter; and the voters who ratified the State Constitutions—for this purpose—occupy the same relations to them that Mr. Stephens gives the States, which *he* says by the people ratified the Constitution of the United States.

It has been shown that in the Tenth Amendment the word could have been used only as synonymous with grant; because the Constitution, so far from saying they are delegated, speaks of them as "*granted*" in the first sentence, and in other places as vested and established.

Neither does the Tenth Amendment, added *after* the Constitution was made and ratified, "declare," as Mr. Calhoun asserted at page 362, "that the powers are delegated to the United States;" it—the Tenth Amendment—only says, "the powers not delegated to the United States," etc. To say the most of this amendment, we infer that those who drew and passed it believed the powers had been delegated in the Constitution, or, what is more probable, they used it—as the Constitution and Mr. Stephens do—as synonymous with granted.

Upon principle, no grant can be revoked without the consent of the grantee; nor can a government be taken to pieces by one or more States, nor can they absolve those subject to its laws, without its consent. We find nothing in the Constitution of the United States, nor anything springing "from the very nature of the government," authorizing such violence.

It is not pretended by the sophists that the Constitution is

a compact between the United States Government and people, but between the States; and the violation of any compact between others—the States, if it could be shown—could not impair the right of government over its people by the United States.

Let us take the cases given by Mr. Stephens for absolving the people of the United States in Georgia from the operation of the laws of the former. He alleges that thirteen other States have violated the provisions of the Constitution for the rendition of fugitives from justice and labor. The first answer is that, as before shown, no State ever promised or pledged her faith—as under the Confederation—to surrender either, but the States instead ordained and established a provision in the Constitution that they should be surrendered, and gave Congress power to pass laws to carry such provisions into effect, and such laws have been passed in pursuance thereof.

Suppose we are wrong, and notwithstanding the terms of the Constitution, and the practice under it, these provisions are compacts between Georgia and the thirteen violators,—that instead of having been declared as ordained and established laws, they were but promises or covenants between the parties. Now, we would ask, on what principle of law or ethics, because some States have violated their covenants with one or more, another State—the United States, and no party to the compact, as we have shown—is to have her rightful laws over her people abrogated? The United States could not be blamed in the case supposed, and there would be no more right to absolve her people for the violation than those of some other innocent foreign State.

But let these provisions of the Constitution be fundamental laws,—as they are,—and then the cause of complaint would be of a different character, and justly against the United States; not, however, because she would in such case have violated a compact to which she was a party, but because she had failed to protect the citizens in their Constitutional rights, just as it has been shown Georgia has done under her late Constitution. If the wrong should be of sufficient magnitude, it might justify revolution in either case, as revolutions may become justifiable under all governments; and that is all of it.

We may have occasion to recur to this subject again for another purpose. For the present, enough has been said to show that on account of any action by one or more States, the jurisdiction of the United States Government over the

people cannot be wrested from her. Let a State withdraw and renounce her rights and privileges in the government of the United States, if she will, the United States, "from the nature of the government," cannot coerce her to return. Let her renounce her rights and privileges as a member of the Union, but it does not follow that the United States must renounce its right to govern the people of the United States, as, by consent of the States, they (the people) have ordained it should.

At page 496 Mr. Stephens likens the relation between the States to that of the United States and France after the abrogation of the treaty of 1798. If Mr. Stephens did not see the difference, we have no doubt the reader will, if he has not already.

The difference appears in this, that when the treaty between France and the United States was abrogated, it amounted to nothing more than annulling a compact previously made between the parties. When the "thirteen States" violated the compact with Georgia, as charged by Mr. Stephens, not merely the compact between the States should be dissolved, says Mr. Stephens, but the right of another government—and no party to the compact—to govern its citizens should be abrogated also; and thus, for the crimes of "thirteen derelict States," the United States should pay, say the sophists, the penalty of the dissolution of her government. Another very important difference is, that France and the United States consented to abrogate, and the non-seceding States did not, and chose by arms to enforce their views of the compact or treaty, as France might rightfully have done if she had refused to abrogate. Suppose France and the United States, in the treaty, had set up between them a government over a mixed population of Frenchmen and Americans on an island in the Atlantic, or on territory jointly owned by them, would any one, even a secessionist, hold that the people on the island would have been absolved from obeying the laws of their government because of the abrogation of the treaty? And this case, besides its present purpose, illustrates the sophistry before dwelt on, of treating the compact of the Constitution (if a compact) as if it were a simple treaty or league between States, unaccompanied by any government in the case.

Of all the States on the globe, the separate States of this Union have less right to absolve the people from obedience to the laws of the United States than any other; for no other had any agency in conferring authority on the United States,

or gave any consent that it should be a government over the people. According to Mr. Stephens, the States conferred the grant, and should, therefore, abide by it.

Mr. Stephens, at pages 500 and 501, continues to speak of the right of States to secede from compacts, which no one disputes when it involves nothing more. The objection is, that he proposes more than secession,—he claims aggression. At pages 500 and 501 he claims that the right of secession, and, of course, the concomitant right of absolution, were reserved by an amendment to the Constitution. It does not appear which amendment he means, unless it be the tenth, as he alludes to reserved rights. He says the reservation "is in express terms," and the amendment is in the following words:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or the people."

The reservation to the *people* is significant, but not necessary to be remarked on in this connection.

The reader will notice that the term secession is neither mentioned nor alluded to in the amendment; how, then, could Mr. Stephens say it was reserved "in express terms," when the terms are not expressed at all?

He has fallen into the same error as Mr. Calhoun when he said the right of judging was reserved to the States. They both beg the question; for it must be shown first that there are such rights to be reserved. If there be, it is granted that they are reserved. The whole argument turns on the ground that there are not and never have been such rights since the Confederation,—that is, secession with the concomitant right of absolution.

Mr. Stephens could as well say the right of a State, by an act of its Legislature, to hang the President, was reserved, because it was not prohibited by the Constitution. It is a *non sequitur* to say that because a thing is not prohibited the States by the Constitution, it therefore exists.

Mr. Stephens, continuing, on page 501, says:

"It [the right of secession] was expressly reserved in the ratifications of Virginia, New York, and Rhode Island."

Perhaps there was nothing by which the Southern people were more fatally misled, when they adopted "the mode and measure of redress" in 1860 and 1861, than the above statement by the secession press and orators; and to this day

nine hundred and ninety-nine in a thousand of those who think about it believe in its truth. The preachers, deceived with the rest, gave it sacerdotal sanction from their pulpits, before and especially during the war. We hope, therefore, to be excused for taking some pains to expose the error.

The first remark to be made applicable to all the ratifications of these three States is, that the right of secession is neither "expressly" mentioned nor alluded to in them. Indeed, no one at that day contemplated that such a right would ever be claimed.

Secondly. They merely laid down general principles of government in the preamble to ratification, without declaring that they put their ratification on the condition of their adoption, as contended for by the secessionists.

Thirdly. The Constitution was presented for ratification in its totality, and could have been ratified in no other shape, notwithstanding any supposed reservation by any ratifying State, because all the States should have been consulted as to alterations, and should have adopted them by way of amendment before the reservation could have been valid as part of the Constitution; and these States seem so to have understood it, as they *recommended alterations* by amendment to suit their views. When they ratified the Constitution as presented, they had to take the risk of alterations, or of the decisions of the courts on questions when they might arise.

Let us take up each one of these ratifications, and we will see that, so far from the right of secession having been "expressly reserved," it does not so appear even inferentially.*

The words in the ratification of Virginia are stated thus by Mr. Stephens:

> "It is to be noted that in it they expressly declare and make known that the powers granted under it may be resumed whensoever they may be perverted to their injury."

---

* Mr. Stephens has been so in the habit of speaking and writing carelessly and without examination for the temporary triumphs of political campaigns, when he could rely on the credulity and prejudice of voters to take anything as true without examination, that he has been led—unintentionally, we hope—into the same careless way in writing history. Mr. Stephens must, therefore, excuse us for advising him, if another edition should be called for, to correct the mistakes and misrepresentations which we have pointed out, as well as others that we have not noticed; for otherwise, when the history of "the great rebellion" shall be written by a Hume, Macaulay, or Motley, his history may be gibbeted in a way to which our poor pen makes no pretensions. We prefer having his book corrected rather than exposed; for, so far as he is concerned, we take no pleasure in noticing his historical outrages.

The words in the ratification are:

"That the powers granted under the Constitution, being derived from the *people of the United States*, may be resumed by *them* [italics ours] whensoever the same shall be perverted to their injury or oppression." (See pages 254–5.)

The reader will notice, the right of secession is neither "expressly" named nor alluded to.

Let us next examine if the right be inferentially reserved. Saying truly that the powers of government may be resumed by *the people of the United States* is very different from saying they may be resumed by a portion of them, though it may be a fraction as large as Virginia. They might be resumed by the people in the mode provided for by amendment, or by revolution; but Mr. Stephens is speaking of a legal and constitutional, and not of a revolutionary, right.

A State may alter her own government, but not that of another: and secession by a State would alter the government of the United States; for, after ratification, the Constitution took effect and the government of the United States extended over all the people in every State. The people of Vermont had, and now have, under the Constitution of the United States, as much jurisdiction over the people of Georgia as the people of the former State have over themselves as citizens of the United States; and the jurisdiction of the latter over Baldwin County could no more be taken from her without changing her government, than jurisdiction over that State could be taken from the United States without changing that of the latter.

When the people of Vermont consented to have a government of the United States over them, which the people of Georgia could influence,—perhaps control,—it was in consideration that they should have a like right over the people of the latter State; and therefore the rights of the people of Vermont are concerned in the withdrawal of those of Georgia from the jurisdiction of the United States.

The ratification of Virginia says the power, "being derived from the people of the United States, may be resumed by them,"—the people of the United States, not of Virginia alone; and so says Mr. Stephens's maxim,—as true as any "postulate in mathematics,"—which declares that "whatever is delegated may be resumed by the authority delegating." The authority delegating was the "people of the United States," said Virginia. If the above maxim is not sufficient, we will answer him by those found at pages 20

and 21. "It required the same power to unmake as it had to make." "Everything is dissolved by the same means it is constituted." "Nothing is so consonant to natural equity, as that every contract should be dissolved by the same means that rendered it binding." So, if thirteen made, according to the maxims, they should unmake.

The reader now sees that secession was not "expressly reserved," nor even inferentially, by Virginia, and could not have been, conformably to the Constitution. We have said that Virginia, in the preamble to her ratification, was merely declaring her opinion on great principles, without any expectation that they were to be engrafted on the Constitution, if not already there, as some, if not all, were; and, in the conclusion, she made this manifest by declaring that she ratified "under the conviction that whatever imperfections may exist in the Constitution ought rather to be examined in the mode prescribed therein [by amendments] than to bring the Union into danger by delay, with a hope of obtaining amendments previous to the ratification," etc.

So far from expecting to have anything inserted in the Constitution, she would not have any delay to have them in by amendment. Much less did she pretend—as the sophists say—that her ratification was on any such condition.

No one disputes, or ever has disputed, what Virginia declared: the right of a people, making a government, to resume their powers and construct another; but that a part shall not be permitted, in violation of Mr. Stephens's maxims, to undo what all did, is the objection made.

Before dismissing Virginia, we will call Mr. Stephens's attention to the fact that she speaks of the "powers *granted*" (not delegated) "under the Constitution;" and that they were derived "from the *people of the United States*," and not from "the States." If Virginia's opinion is to be the standard for one purpose, it should be for another.

As we argue this question, not on the sayings or opinions of any one, however respectable, but upon the merits of the question alone, we will allow Mr. Stephens the same latitude; but that latitude does not permit him to use the authority of Virginia when for him, and not when against him.

Turning to the State of New York, we can find nothing alluding to the right of secession, much less anything reserving it in "express terms."

On account of their similarity to the words relied on by Mr. Stephens in the ratification of Virginia, we suppose the

following are those, in the ratification of New York, that he contends reserve the right of secession to that State "in express terms," as we can find nothing else that speaks of resumption by the people or State: "That the powers of government may be reassumed by the people, whenever it shall become necessary to their happiness." What we have said of similar words in the ratification of Virginia will apply to the above, without any repetition. The New York Convention, like that of Virginia, but to a greater extent, declares its views on many cardinal principles of government, among which is the above; and so far from stating that she expected any of the principles declared should be incorporated in the Constitution, or that she ratifies with any conditions or reservations, she only goes on to express her confidence that some things would not be done until the Constitution could be amended.

It takes five pages, and eighteen sections, to give the declaration of principles made by Rhode Island when she ratified the Constitution, among which is the following: "That the *powers* of government *may be resumed by the people*, whenever it shall become necessary to their happiness."

From the italics, and their similarity to like words in the Virginia ratification which Mr. Stephens gives as *expressly reserving* the right of secession, we presume he relies on them to sustain his declaration. They need no further comment than that given to those in the Virginia ratification.

The reader can compare them with the declaration of Mr. Stephens that the right of secession was expressly reserved by those States.

In concluding the ratification of this State, her Convention, like that of New York, so far from asking that her long declaration of principles should be incorporated, only *hoped* that suitable amendments might be made to cure defects.

The secession politicians have so long been saying and doing what they pleased, that they think it their right to take unwarrantable liberties with the language; indeed, the sophists seem to believe they have an exclusive right to the English language. Admitting the Constitution to be a compact and the States as sovereign as Mr. Stephens would have them, his position that they should have been let alone, and that the United States was wrong in making war, is plainly untenable.

The ninth article of the Confederation provided—what Mr. Stephens calls a court—a tribunal for adjudication of disputes between the States, as the Constitution has between

individuals, and yet the confederates could be compelled to abide its adjudications. One confederate could not, by secession, have evaded the execution of the compact, if the others had chosen to hold her to compliance. For the Confederation was intended and declared to be perpetual, and the confederates had the right to hold every member bound by the bargain of the league, and force compliance with the law of the compact, if they had so chosen.

At page 480, Mr. Stephens, speaking of the reasons for abandoning the Confederation, says:

"The great object was to obviate the difficulties and the evils, so often arising in all former republics, of resorting to force against separate members when derelict in the discharge of their obligations, under the terms and covenants of their union. . . . . By the laws of nations, the Confederate States thus derelict had the clear right to compel a fulfillment of their solemn obligations, though the very act of doing it would, necessarily, have put an end to the Confederation."

Yes, though the Confederation might be put an end to, yet the laws of the Confederation should be executed on each member; though one might complain that the compact had been broken, the others had, and could exercise, the right of judging as well as the derelict member, and of enforcing that judgment. Nay, in the case of simple treaties, both parties having a right to judge, each has a right by war—there being no common arbiter—to execute its judgment. But Mr. Stephens's conclusion forbids that universal right to the United States, and holds it was wrong for *her* to war on individuals (he may say *States*, but it will not change the principle) to execute her judgments, as all other States have a right to do, and as he admits the Confederates might have done.

The States in 1787 made a treaty—according to the interpretation of the sophists—when they granted fundamental laws for establishing the government of the United States. The treaty has been executed for nearly a hundred years, and the seceders now, saying it has been violated—"palpably violated"—by some of the other parties to it, declare that it shall be abrogated,—that the seceders may withdraw their grant and the non-seceders shall submit, without raising a hand to assert what *they* judge to be their rights; provided always the seceders will swear hard enough that the other side has "palpably violated the compact" or treaty.

France and Spain would be no more audacious than the sophists, if they were now to secede from their treaties granting to the United States Louisiana and Florida, and

reclaim those territories on the ground, under any pretext, that the latter had violated them; and this, without any right to go to war on the part of the United States, if the other high contracting parties would swear that the United States had "palpably violated" the treaty.

All this is admitting that the States are as sovereign and independent as France and Spain. France, Spain, and the United States only claim an equality of sovereignty, but the seceding States claim to be sovereign over the non-seceders, as a sovereign over his subjects, for they assert that they must have their will executed, must be "let alone," while the other parties are not allowed to say nay. More absolute and tyrannical than any sovereign known to civilization, the seceders claim the right to seize the forts and arsenals built on lands granted by them to the United States, and for which they have been paid; and when the grantee seeks to recover the property of which he has been robbed, and to execute the laws, the right to execute which has also been granted, the whole Southern atmosphere is resonant with wailings that the despotic sovereigns should be "let alone."

Let us next apply the sophists' "mode and manner of redress" to individuals, and show its unreasonableness. Ben buys a coat of Jack, both being good State-rights men, after the model of Mr. Stephens. Jack, becoming dissatisfied with his trade, wishes to "rue the bargain," or secede, in secession language. He tells Ben he has violated the compact, for some reason, it matters not what; Ben denies the impeachment, and says he will not take off the coat unless it be to fight for it. Jack remonstrates that he has no right to fight (according to Mr. Stephens's book), for he, Jack, says that Ben has "palpably violated" the contract of sale, and he, Jack, only, being the ruing or seceding party, has the right to judge; or, if Ben have any right to judge, he would be wrong, according to the book, to fight for the coat, and he, Jack, must be "let alone" in taking the coat from Ben's back.

Absurd as these cases are, they do not bring out all the absurdities of Mr. Stephens's book. They do not present the sophistry of making a simple law a compact between sovereign and independent States, and other like inconsistencies.

States, like individuals, may renounce any of the rights and privileges of treaties, and, like them, they cannot at pleasure be discharged of obligations and duties.

The secessionists not only claim the right by virtue of

secession to absolve her citizens from obedience to the laws of the United States, but to rob her of her property.

By the eighth section of the first article of the Constitution, "The Congress shall have power . . . to exercise exclusive legislation, in all cases whatsoever, . . . over all places purchased by consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

Under the provisions of this section, the United States, by consent and grant of the State of South Carolina, purchased land of that State, on which she built Fort Sumter. Under the same section, like grants were had from the State of Georgia for Fort Pulaski, and land for an arsenal at Augusta. These were all seized by virtue of secession,—the arsenal, indeed, without such authority.

The sophists justify the deed on the ground that the forts were built for the defense of those States. They were for the defense of those States, as parts of the United States, against *foreign* aggression, but not against the United States.

That she should have built forts, at the expense of millions, to protect not only a foreign State,—an attitude assumed by the seceded States,—but a hostile State, is an absurdity too startling to be named by one not claiming the privileges in argument which the sophists seem to think belong to them.

Since writing the above, we have seen Mr. Stephens's second volume of "The War between the States," and notice that on this subject he says, at page 41, that after secession South Carolina "had a perfect right to demand the possession of any landed property whatever, lying *within the limits of her jurisdiction*," etc. We have italicized the latter part of Mr. Stephens's proposition, to show the reader that it does not agree with the facts. For South Carolina had not "jurisdiction," by the section of the Constitution,—or "Compact," as the sophists would call it,—over Fort Sumter, after it was granted to the United States; neither was it "within the limits" of South Carolina, any more than the District of Columbia is within the limits of Maryland and Virginia.

Mr. Stephens then goes on to show that by virtue of the right of eminent domain, "South Carolina, then, even before secession, and while she held herself bound by the Constitution, had a perfect right to demand of the United States Government the possession of this identical property, on paying just compensation for it, if she deemed it essential for her public interests."

We were of the opinion that the right of eminent domain

was a right to take for public use land lying within her jurisdiction. But here is land lying *within the jurisdiction* of the United States, by virtue of the express terms of the above section of the "compact," and granted to the United States by a grant more solemn than a common treaty; and according to secession, it still belongs to South Carolina, if she choose to say so. If Fort Sumter does not belong to the United States, and is not within her jurisdiction, the District of Columbia is not, as it is held by virtue of the same section, and grants from Virginia and Maryland, as Sumter is from South Carolina.

If Mr. Stephens's doctrine concerning the right of eminent domain be true, a State cannot cede territory so as to divest herself of that right. So Spain, France, and Mexico can at any day resume jurisdiction over more than two-thirds of the United States if they should "deem it essential to their public interests," on no other terms than "paying a just compensation for it;" and on the same terms Florida can resume jurisdiction over the territory she has ceded to Alabama, and Maryland and Virginia over the District of Columbia.

Mr. Stephens proceeds to say:

> "This fort [Sumter] never could have been erected on her soil without her consent, as we have seen;"

and then cites page 192 of his first volume, where we see that the general government

> "Has no right to enter, or take jurisdiction over, a foot of her [a State's] soil, even for the erection of forts and arsenals, etc., except by her consent, first had and obtained by contract or purchase."

But the fact is, "the consent" of South Carolina *was* "first had and obtained by contract or purchase."

On page 42, vol. ii., Mr. Stephens proceeds, on the same subject, to say:

> "The title, therefore, of the United States to the land on which Fort Sumter was built, was in no essential respect different from the title of any other landholder in the State."

Not different, Mr. Stephens!—when the eighth section of "the compact" says in express terms that "the United States shall exercise *exclusive legislation, in all cases whatsoever*, . . . over all places purchased by the consent of the Legislatures," etc.! And we are not aware that "any other landholder in the State" had jurisdiction to legislate "in all cases whatsoever" over the lands held in South Carolina or in any other State. Not different!—when never, since the days of

the feudal barons, a private landholder claimed jurisdiction over his land; and never before has it been claimed that when one State or nation purchased territory of another, such purchaser did not take jurisdiction, and the right of eminent domain. Indeed, it is the whole object of such purchases by States; for generally the property of the soil is in private landholders, and if not, the government hastens to grant its unoccupied territory to them, retaining the right of eminent domain and jurisdiction only.

And Mr. Stephens not only writes the above, but says, "There can be no question of the correctness of this principle." If we could be astonished at any doctrine of a secessionist, we could not believe in the sincerity of Mr. Stephens when he takes the above position. It may be because his first volume has gone almost entirely without rebuke that he has become reckless as to the doctrine he lays down. On any other subject he would be more cautious in his statements. Secession seems to be a distemper, that when taken, the subject assumes privileges as to rights, including language, unknown to any other disease with which humanity has been afflicted. No publicist ever before thought of claiming such rights for States as those just noticed as claimed by Mr. Stephens for the seceded States.

If Mr. Stephens had been arguing a law, or any other question, he would have been ashamed to assume positions which he does as a secessionist,—not only without a wry face, but honestly, sincerely, and earnestly; and expects to be, and will be, believed by the whole infected tribe, and with a furiousness ready to rend any unbeliever in the great "rightful remedy."

Mr. Stephens then, in indignant terms, proceeds to pour upon the head of the Federal government his wrath for having inaugurated the war by endeavoring to execute her laws and recover her own property. Verily, Mr. Stephens seems to have written history for buncombe.

CHAPTER VIII.

THE COMPACT WAS NOT BROKEN BY THIRTEEN STATES, AS CHARGED BY MR. STEPHENS, BUT BY GEORGIA ALONE, AND BY HER ON SEVERAL OCCASIONS.

Mr. Stephens does not tell us by what thirteen States the compact was broken, nor how, except in the following unsatisfactory extract, to be found at page 497:

"Thirteen of their [the seceded States'] confederates had openly and avowedly disregarded their obligations, under that clause of the Constitution which covenanted for the rendition of fugitives from service, to say nothing of the acts of several of them, in a like open and palpable breach of faith in the matter of the rendition of fugitives from justice."

Mr. Stephens has not informed us what were the *acts* violating the Constitution committed by the thirteen States that "disregarded their obligations under" the Constitution.

We cannot give copies of the "liberty bills," but think, however, we recollect their substance sufficiently for the purposes of this argument.

The Constitution of the United States provides that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of invasion the public safety may require it."

Some of the free States, we believe, passed laws granting the privilege of the writ to fugitive slaves.

The right of trial by jury having been granted by the Constitution, some of them—perhaps thirteen—passed laws giving the benefit of such trial to fugitives from service. Some passed laws denying the use of their jails for the imprisonment of such fugitives, and some made it penal for State officers, as such, to arrest them.

If there were any other laws on the subject passed, they were no doubt of the same character.

The Constitution having provided that the writ of habeas corpus should not be suspended, etc., it certainly was not unconstitutional to comply with its provisions. If the fugitive, black or white,—and he might be white, bound to ser-

vice as an apprentice, or in some other character,—was arrested, the bringing him up under the writ did not discharge him if found to be a fugitive and properly claimed, as such, by a United States Commissioner. It was decided by the United States, if not by the State courts, that the fugitive was entitled to trial by jury in the State from whence he fled only.

No one in his senses, we presume, holds that the States had not the right to deny the use of their jails to any they might choose. The same may be said of their officers. But if that or any other like law was unconstitutional, the proper court would have so decided; and we have shown on principle, and by the admissions of Mr. Calhoun, that the United States courts were the proper tribunals to adjudicate such questions.

We will proceed to show, on the highest secession authority, that the United States and free States courts gave the fullest protection to the owners of fugitive slaves.

To give the Southern States no cause of complaint on this subject, they were given *carte blanche* to draw such a fugitive slave bill as they wished. One was drawn (we believe) by Mr. Mason, of Virginia, of a very stringent character; if it was not sufficient, the secessionists could not complain of the free States.

Speaking of this law, the Secession Convention of Georgia said:

"The Supreme Court unanimously, and their own local courts (with equal unanimity, with the single and *temporary* exception of the Supreme Court of Wisconsin), sustained its constitutionality in all its provisions."—(See *Journal of Convention*, page 111.)

From the word we have italicized, it will be noticed that the solitary exception was but temporary. Now, if this stringent law was pronounced everywhere constitutional, all acts contravening it would necessarily have been pronounced so by the free State as well as the United States courts.

Mr. Stephens is less satisfactory about the violation of the Constitution as to the rendition of fugitives from justice. It consisted, no doubt, of some such embarrassments as the above, concerning fugitives from labor. We say embarrassments, because such acts, if unconstitutional, are only embarrassments, as we will show directly.

There were great embarrassments by mobs and underground railroads, but these were no acts of *the States;* and all laws so revolting to public sentiment as the fugitive

slave law was in the free States always meet with such opposition, and nowhere more than in the seceded States. To say nothing of the obstructions to the collection of debts,—unconstitutional obstructions *by State laws*,—mobs have, by lynch law, executed innocent Northern men enough to involve the United States in war with more than half the globe, if the murdered had been foreigners. If mob violence be a violation of the compact by the State in which committed, then the breaches by the seceded States are too numerous and revolting to relate.

The large majority of the people of the seceded States—as taught by stump orators—believed that preaching, speaking, and writing against slavery was a "breach of the compact;" but this is too absurd to merit an argument.

There are two answers to all charges of breach of the compact by States, that are conclusive to any fair, logical mind. The first is, they have made no compact to violate; and secondly, they cannot violate it—if made—if they were to try, so long as the true theory of the Constitution is executed.

The first proposition has been so elaborately argued that we need say but little here; for if the reader be satisfied—as we think he must be—that the Constitution is a law, and not a compact between the States, there is an end to the question.

If the thirteen violators mentioned by Mr. Stephens had made a compact and pledged their faith for the rendition, as under the Confederacy, and it was a government "of and for States," why have any law about it? Why should not the seceders have applied directly to the violators to redeem their plighted faith? Why, in the fourth year of the republic, when all the makers of the Constitution were alive and knew that the Constitution was but a compact between States, did they pass a law for rendition of slaves? Why did not some member of the Convention in Congress—for there were many of them there—stand up and say no law should or could be passed on the subject to operate on individuals, as it was a matter of compact and good faith between States only?

Why not have said, with Mr. Stephens at pages 140–1, that the Constitution was ordained and established "not for the *people* in any sense, but for States as political bodies;" "that it was intended to be, and is, a government of States and for States"? And why not have said, as he did in his Milledgeville speech, and as repeated in his "Reviewer Re-

viewed," that the aggrieved States should appeal to the offending States?

Instead of that, and in *pursuance* of the Constitution, they passed a fugitive slave bill to execute the provision of the fundamental law for the rendition of fugitive slaves.

Secondly. We said the States could not violate the Constitution,—of course, if the Supreme Court should be appealed to,—and to this end the reader will recollect what we asked him to remember, that Mr. Calhoun said (and truly) that all unconstitutional acts are null and void. So, if any of the liberty bills were unconstitutional, they were void and of no effect, and could not have protected any one acting under them from the penalties of the fugitive slave bill. On the other hand, if constitutional, they were, of course, no violations. And we have shown, on principle, which Mr. Calhoun has in effect admitted, that the Supreme Court—"from the necessity of the case"—is the proper tribunal to judge of the constitutionality of such laws as the fugitive slave bill.

If, however, it be possible for a State to violate the Constitution, Georgia did so several times, and is the only State of which we are aware that has ever succeeded in that feat; and did it half a century before any liberty bills were passed, as we will proceed to show.

By the second section of the third article of the Constitution it is provided that the judicial power of the United States shall extend "to controversies between a State and the citizens of another State." In August, 1792, less than five years after the ratification of the Constitution by Georgia, Chislom, being a citizen of "another State," sued the State of Georgia in the United States Court under the above provision of the Constitution. Georgia denying the jurisdiction, the Supreme Court decided that a State was suable by a citizen of another State, when the State Legislature of Georgia carried its opposition to an open defiance of the judicial authority of the United States, and the Constitution had to be amended to deny to the United States Courts jurisdiction over suits by a citizen against a State. If it were possible "to break the compact," here it was done half a century before the passage of the fugitive slave bill. Instead of Georgia submitting to the Constitution, as interpreted by the court, the United States had to submit to Georgia, and make the Constitution—by amendment—conform to her, instead of making her conform to the Constitution.

On the 7th of January, 1795, the Legislature of Georgia passed an act granting to certain individuals therein named

a large body of her western lands, and soon after issued to the grantees patents for parts of them. The Constitution of the United States had previously prohibited any State from passing "any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts." The question having been afterwards brought before the Supreme Court of the United States, Chief Justice Marshall, delivering the unanimous opinion of the court, decided in a proper case made that the grant of the State by and under the above act was a contract *executed*, and that executed as well as executory contracts were within the above constitutional provision; adding, "It would be strange if a contract to convey were secured by the Constitution, while an absolute conveyance remained unprotected."

Notwithstanding the above provision of the Constitution, or "compact," as secession would call it, to which Georgia was a contracting party, and notwithstanding the act of cession of 1795, she proceeded, by an act dated February 13, 1796, to declare the former null and void, "and the grant or grants, right or rights, claim or claims, issued, deduced, or derived therefrom, or from any clause, letter, or spirit of the same, or any part of the same, thereby also annulled, rendered void, and of no effect," etc.

Georgia had no doubt good cause for repealing the act of 1795, but the Supreme Court decided that she could not divest the "title of innocent purchasers under her grant by the act of 1795, and that the repealing act of 1796, as to them, was unconstitutional and void." But Georgia, as she did before, and always since has done, until her attempted secession, bade defiance to the United States and her Supreme Court, and executed her unconstitutional law, thereby violating "the compact" half a century before she charged the Northern States with breaking it. (See Fletcher *vs.* Peck, 6 Cranch, 87.)

By the second article, second section, of the Constitution of the United States, the President has "power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." By the sixth article, "All treaties made under the authority of the United States shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

During the administration of John Q. Adams he appointed commissioners to treat with the Creek Indians, when a treaty

was made at the Indian Springs. The President, having received evidence satisfying him that it was fraudulent, refused to have it executed, and ordered new negotiations. A new treaty was made, with which Georgia was not satisfied, and her Governor, Troup, and the Legislature, set it aside in defiance of the United States, we believe, under some pretended —or rather forced—compromise.

As an independent people, the Cherokee Indians had treaties with the United States, beginning soon after the independence of the latter, and which were in full force in 1830, about which time Georgia extended her laws over them. This being repugnant to the existing treaties between the United States and the Indians, the Supreme Court proceeded to arrest the execution of the Georgia laws. Georgia, in defiance of treaties and the orders of the Supreme Court, took possession of the gold lands in the Indian territory, condemned and executed Indians, and sent to the penitentiary missionaries residing among them.

To use the language of a judge of the Supreme Court of Georgia, "In the cases of the missionaries Worcester and Butler, of Tassels and of Graves, her courts treated with contempt the claim of jurisdiction over them by the Supreme Court of the United States. The missionaries served their time out in the penitentiary, notwithstanding the mandate of the Supreme Court of the United States that they should be set at liberty. In this course on the part of the judiciary, the legislature and the executive concurred,—indeed co-operated,—and the people approved the conduct of the whole."

The reader will recollect that the judicial power of the United States extended to all treaties made under their authority. In this Georgia case *every* branch of the government not only "concurred," but "co-operated." "And the people approved the conduct of the whole," which has been shown, on the authority of the Secession Convention of Georgia, not to have been the case with the liberty bills in the free States, where they were declared void by the courts when contravening the fugitive slave bill. It must now appear clear to the reader that, if there be any possibility of a State "violating the compact of the Constitution," Georgia violated it often and long before the passage of the liberty bills; violated it triumphantly by *all* departments of her government, and not only "approved" by her people, but gloried in by the present whiners about the "liberty bills."

It is admitted by the highest judicial authority of Georgia,

and approved by the people, that all departments of the government had bid defiance to the treaties of the United States though adjudged legal by the Supreme Court. There is no question here of mobs and of irregular resistance, but of successful resistance by *the State*, if all departments of the government, with the people, can make a State.

Mr. Stephens has not attempted to show, nor can he show, a case where *a State* successfully prohibited the enforcement of this law—"providing for the complete execution of the duty"—for delivering fugitive slaves to their owners, particularly when an appeal was made to the United States courts. They may have refused to provide jails and officers to perform the duties required of the United States. This, if unneighborly, was not required by the "compact."*

Mobs may have rescued the fugitive in a few instances, and mobs in the seceded States have hung men under suspicion of not believing in the divine institution. Some in the accused "thirteen" may have written, preached, and prayed against slavery; nearly all in the seceded States not only wrote, preached, and prayed for it, but would have hanged—as they did many for less offenses—any one who would not have said amen to such prayers.

We think the reader will agree that we were right in saying the United States never obtained her independence of the States—particularly of Georgia—until after the failure of the late "mode and measure of redress."

Other States had often passed unconstitutional laws, but having been pronounced unconstitutional, null, and void by the United States Supreme Court, that government proceeded to have the judgments executed. But it was only in the case of Georgia, so far as we are aware, that any State has successfully and unconstitutionally arrested the execution of the laws of the United States, and which she has always done at her good pleasure, and gloried in it, though her secession leaders were among the most blatant revilers of the free States for having first "violated the compact."

As Macaulay said of Barère's lies,—"Those who have never lived in South America know nothing of earthquakes; those who have never lived in the West Indies know nothing

---

* In the case of the Commonwealth of Kentucky *vs.* Governor Dennison of Ohio, 24th Howard, U. S. Reports, page 66, the Supreme Court decided that no law of Congress could compel a State officer to perform any duty. And this by a State-rights Democratic bench, which made the Dred Scott decision, with one exception.

of hurricanes; and those who have never seen Niagara know nothing of cataracts;" and we say, those who have never known secessionists have no knowledge of audacity.

Since writing the above, we have seen Mr. Stephens's second volume, and, at the risk of some repetition, will have to notice what he says of the rendition of fugitives, as he is more specific there in his charges than in his first volume.

At page 44 he says:

"The Governments of Maine, New York, and Ohio had refused to deliver up fugitives from justice, who had been charged with a breach of the laws of the Southern States in matters relating to the status of the black race."

We have seen a report of one case on the subject from but one State (Ohio); and a review of that will, no doubt, be a review of all; for we presume the others could hardly be better for Mr. Stephens's argument than this.

In the case of the State of Kentucky *vs.* Dennison, Governor of Ohio, reported in 24th Howard, page 66, it appears that the Governor of the former State, in due form, demanded of the Governor of Ohio the delivery of a fugitive from justice, which was refused, and that the Supreme Court of the United States decided it could not compel the rendition.

The court decided that the delivery of fugitives from justice was only a *moral* obligation on the part of the States, and therefore there could have been no legal "compact between the States" to perform it. An individual may be under a moral obligation to inform his neighbor where his stray stock may be found, but not under any legal obligation to do so, or to deliver the lost property to the owner. If he should fail to perform such moral duty, he no more violates a contract than Ohio did—according to the Supreme Court, —when she refused to perform her moral duty to deliver the fugitive in the case reported. Therefore, according to this, the strongest case we can find of a "breach of faith in the matter of the rendition of fugitives from justice," there was no violation of a compact, because an obligation to perform a moral duty is no compact.

State-rights judges first decide that this provision of the Constitution imposes a moral obligation only on Ohio, and, for her crime in disregarding it, State-rights politicians forthwith visit punishment on the United States by rending the Union.

The first objection is, that God only punishes violations of

moral obligations; the second is, that the United States has not promised that Ohio would perform legal, much less moral, obligations. Mr. Calhoun, if alive, and Mr. Stephens, would reply that the Constitution being a compact between the States as well as a law to the people, Georgia, and all other States, were, by such violation by Ohio, relieved of their obligations under the constitutional compact. This is an arbitrary principle asserted for the convenience of bad logic. For if each of thirteen men, for themselves, make a contract, each only can be made liable for himself, and not other innocent promisers. This is law, common sense, and common honesty. We presume we have satisfied all readers that the Constitution is nothing but a law; but for the sake of argument, and to show the absurdity of holding otherwise, we will suppose it to be a compact as well as a law, and that Ohio was legally bound—as we contend her Governor was—to deliver the fugitives, yet the compact was broken with no State but Kentucky, and it would have been a *non sequitur* to say, therefore, Massachusetts was not bound to deliver a fugitive slave to a Georgia planter, and that Georgia was relieved from her obligation not to pass laws impairing the obligation of contracts.

To still further open the road to the main point, we will admit we are wrong in this reasonable position, and that a breach with Kentucky was not merely a breach between Ohio and all the other States, but between each other State with every other one. The reader will remember that the United States is no party to the supposed compact, and that the sophists admit that the Constitution, or, if they choose, the laws made in pursuance thereof, are laws of a government over the people, and then it cannot follow that such government is, in any shape, responsible for such real or supposed violation. We have conceded the most liberal construction to the compact part of the sophists' theory,—even to absurdity,—and only ask the strictest and most *necessary* application of the part which admits the Constitution, and laws passed in pursuance thereof, to be a law to the people.

Here is a government the most commanding and powerful in the world; established, as admitted, by proper authority, —and, indeed, by better authority than any other,—that because two petty States fall out about a vagabond thief, and one accuses the other—it may be falsely, as Mr. Stephens has accused the thirteen—of violating the compact, and the whole thirty-seven so-called subordinate petty States—two-

thirds of whom owe their existence to the United States—have the "undoubted right" not only to obstruct the collection of taxes, imposts, United States mails, and all of her laws, and to rob her of the property which she has bought, paid for, and gotten their grants to, and this mob of petty plunderers have the "sovereign right" to tear down this grand old republic, strike her proud flag from her forts, arsenals, and ships that girdle all the earth; and this giant among the nations must not say nay, but lie a helpless victim to the "rightful remedy" of State-rights lynch law. For, have not Mr. Stephens and the great "unanswerable" said this is "the mode and measure of redress," springing "from the very nature of the government"? The United States, according to secession theory, is not permitted the first law of nature and of all nations,—self-defense, or self-preservation. For while the riotous States seize her property, and tear her in pieces, she must remain dumb as a lamb before the shearers. If she raise an arm or utter a remonstrance, there is a general howl of secessiondom that they must "be let alone." And Mr. Stephens writes fourteen hundred and eighty-two pages of grave history to prove that the State-rights spoilers should have been let alone; and because they were not, the United States is the greatest of sinners and tyrants. Mr. Stephens may write fourteen hundred and eighty-two pages more, twice over, to which all seceders may say amen, but there will not be a single response of approbation from an intelligent, impartial, and unprejudiced reader who will carefully examine the question.

Let the States have their compact between themselves, whenever they can make it a compact; let them secede from all connection with each other; let those who are so foolish abandon their rights and privileges as States under the Constitution; let them refuse to send Senators to Congress or participate in a Presidential election; but they have no right to arrest the laws of the United States, or to destroy that State and nation more than any other.

On the subject of fugitives from labor Mr. Stephens says, at page 45, vol. ii., that he had some of the liberty bills, "perhaps not all," and gives the following—no doubt the strongest—from the Legislature of Vermont. There could not well have been one more violative of the Constitution if carried into effect than this, and, therefore, an answer to it will be an answer to all:

"Every person who may have been held as a slave who shall come or who may be brought into this State, with the consent of his or her alleged master

or mistress, or *shall come*, or be brought, or *shall be* in this State, shall be free.

"Every person who shall hold, or attempt to hold, in this State, in slavery as a slave, any free person, in any form or for any time, *however short*, under *pretense* that such person *is* or *has been* a slave, shall, on conviction, be punished by imprisonment," etc.

The Secession Convention of Georgia admitted that the Congress of 1850 had passed a law "providing for the *ample* [italics ours] execution for the delivery of fugitive slaves by Federal officers," and that "the Supreme Court unanimously, and their own [the thirteen] local courts with equal unanimity (with the single and temporary exception of the Supreme Court of Wisconsin), sustained its constitutionality in all of its provinces."

This admits that the United States had given ample remedy (besides the historical fact that it was so), by act of Congress, for delivery of fugitive slaves, and which its judiciary had unanimously pronounced constitutional; and that the "thirteen," far from violating the compact, had by their Supreme Courts, "with equal unanimity," likewise declared the law constitutional. These were declarations by the Supreme Court of the United States and of the "thirteen," that all laws of Vermont or any other State, contravening these "*ample* provisions" for the rendition of fugitive slaves, were null and void. So it was out of the power of any of the "thirteen," by any legislative act, to have violated the supposed compact, unless, like Georgia, they had stood by and violently executed the supposed obnoxious laws in defiance of the United States. The "thirteen" did exactly the reverse; and for the truth of the assertion we give the admission of the whole Secession Convention of Georgia. And yet Mr. Stephens is so reckless as to say, at page 497 of vol. i., when speaking of the seceding States:

"Thirteen of their confederates had openly and avowedly disregarded their obligations under the clause of the Constitution which covenanted for the rendition of fugitives from service," etc.

If Vermont violated the compact by passing an unconstitutional law, then every State in the Union that has passed, or may pass, one, gave or may give cause for dissolving "the Union."

We are very far from insinuating that Mr. Stephens would corruptly misstate historical facts. But the above is enough to admonish the reader not to take his declarations without examination.

The difference between Georgia and Vermont is, that Georgia—as we have shown—not only by her Legislature passed unconstitutional laws, but her judiciary, executive, and people all concurred in the resistance *successfully*, as admitted and approved by her Supreme Court, and as the records show.

The Legislature of Vermont only passed the law, which does not appear to have been approved by her judiciary, executive, or people, without which it was of no force, but on the contrary—as admitted by the Secession Convention of Georgia—was declared unconstitutional by the Supreme Court of the former State, and by the Supreme Court of the United States. That Convention, when it said the "*ample*" fugitive slave bill had been declared by those courts constitutional, admitted that any unconstitutional law of Vermont, or any other State, contravening the fugitive slave bill, would be void, and could not impair the rights of any slaveholder to arrest his slave.

Mr. Stephens himself, at page 44, vol. ii., speaking of the breaches of the Constitution—as he chose to call them—by the "thirteen," says they were "openly in defiance of the decision of the highest judicial tribunal known to the Constitution." Then those breaches were void and of no effect, as admitted by Mr. Calhoun and all State-rights men. And all the slaveholder had to do, if obstructed by any such "breaches," was to appeal not only to said high "judicial tribunal,"—as thousands have had to do in like cases of unconstitutional State laws,—but to the courts of any of the "thirteen," for redress.

The passage of a law, without execution, is a mere *brutum fulmen*, and no one knows, until it passes the judgment of the courts, that it *can* be executed. It is like the threat of a private individual, which harms no one if not executed, much less if it *cannot* be, as admitted by Mr. Stephens and the Georgia Convention would have been the case with the law of Vermont. It has not been shown by Mr. Stephens, or any one else, that the Vermont, or any other like law, ever was a legal obstacle to the arrest of a fugitive slave; or, as an illegal obstacle, that it was ever executed in defiance of the United States, as was often done by Georgia laws.

Mr. Stephens had forgotten his own admission and that of the Secession Convention, or he could not, at page 44, vol. ii., have said of the liberty bills that they "effectively prevented the execution of that clause of the Constitution which provided for the rendition of fugitives from service."

If it had never been made a political question in party politics, there need have been no difficulty about fugitive slaves. For, if the law for their rendition was constitutional, the government would—as it did—give all its power to enforce it; if unconstitutional, it should not have been enforced.

CHAPTER IX.

THE STATE OF GEORGIA, IN FACT, AND ACCORDING TO MR. STEPHENS'S DOCTRINE, NEVER DID SECEDE, EVEN AS HE UNDERSTANDS SECESSION; AND, THEREFORE, NEITHER HE NOR ANY OTHER OF HER CITIZENS CAN PLEAD HER AUTHORITY FOR TAKING UP ARMS AGAINST THE UNITED STATES.

So far we have admitted Mr. Stephens's "facts;" have conceded that the States had in fact, and in due form, seceded. As the lawyers say, we "demurred to his plea" that secession absolved the people from their obedience to the laws of the United States, and justified them in taking up arms to resist its authority.

If the reader—as we have no doubt Mr. Stephens will—should overrule our demurrer, and say the laws growing out of the admitted facts are against us, then we deny the facts, and, taking issue on them, say that Georgia never did secede even as Mr. Stephens understands secession, and we presume no other State did, unless it may have been South Carolina. With confidence we deny, as heartily as we did Mr. Stephens's law, that the people of Georgia have ever withdrawn their consent to the government of the United States or given it to the government of the Confederate States. We charge that they have been driven to wage one of the most cruel, wicked, and desolating wars recorded in history, against a government of their choice, and for one without any but the most flimsy pretense of the consent of the people of the State to support it, and for one fraudulently and corruptly imposed upon them; that if they have been submissionists, it has been to the fraud and violence of a few desperate and heartless secessionists, one day of whose rule was more oppressive to the Southern people than seventy years of that of the United States had been.

As preliminary to what we are about to say, we will show why all constitutions should be ratified by the people.

The reason why ordinary legislation is of less authority and sanction than a Constitution is, because the former is simply an act performed by chosen representatives without subsequent ratification by the people, and may go into operation until repealed, though every voter in the State may be opposed to it after seeing and knowing its provisions. Not so with Constitutions, as they are first drawn up by delegates elected just as are the delegates who make laws by ordinary legislation, but are of no force until, having been published and read by the people, with time to study their provisions, they are ratified by them in person, and thus have the highest sanction that the people can give. If the people refuse to ratify them, they are of no authority at all; not so much as an act of the Legislature, for that is passed by three departments,—the two houses and the Governor,—and all three representing the people, so it may be said to have a triple representative sanction, while a Constitution has but one prior to ratification.

The Constitution of the United States was drawn up by delegates of the States, sent, under a resolution of Congress, to meet in Philadelphia, in May, 1787. On the 17th of September, 1787, they had drawn up, and on that day adopted, the Constitution as fit to be submitted to the people of the United States for ratification, which was required by the resolutions of Congress, and the Convention, to be done by delegates elected in each State for that purpose after "the people" had had time to read and canvass its provisions; and it was ratified, not by the *State governments in their political or legislative capacity*, but by the *people* of all the thirteen States in their individual character, for themselves and not the State, and who were all people of the United States. Thus was put into operation a government that was the choice of the people of the thirteen States,—and by consent of each State as a body politic,—in the most unobjectionable manner that could have been devised. This was self-government in the broadest sense of the word, because by consent of the people directly, and not by representation alone; and was, as prescribed in the Constitution, a government of the whole people of the United States, including those of the seceded States, until revoked. We will directly examine the revocation in Georgia.

Here was a precedent of imposing authority for the ordaining of a Constitution, and which was followed by Georgia in making her State government, both before and after secession. About 1832 Georgia submitted an amended Constitu-

tion to the people for ratification, which they refused; and, the amendment having thus failed, not a single voter proposed that it should go into operation, though it had been made by a fair and full Convention of the people, and one much more fair than the Secession Convention, thus showing that the action of a Convention was considered a nullity until it was ratified by the people. So impressed were the usurpers and rebels against the State of Georgia with the necessity of ratification, that when the Confederate Constitution was made they made a pretense (barely a pretense, as will be directly noticed) of it, by which the people were cheated of their right to ratify or reject everything by which they were to abide as a fundamental law.

Mr. Stephens, on the 22d of September, 1862, wrote a letter on the subject of calling a Peace Convention, in which he says:

"Delegates might be clothed with powers to consult, and agree, if they could, upon some plan of adjustment, to be submitted for subsequent ratification by the sovereign States whom it affected, before it should be obligatory or binding on such as should so ratify."

And the *Constitutionalist*, a leading secession paper of Georgia, commenting on the letter, said:

"The acts of this Convention, however, would not bind the States until ratified by the people; and in this gratifying fact alone rests the security of the Confederacy," etc.

We will now take a short historical view of the way in which the secession of Georgia was effected, to see if it was so accomplished as to absolve the people of the State of Georgia from their obligation to obey the laws of the United States, provided it could have been done at all by the State.

The Legislature of Georgia, after having provided for the calling of a Convention in 1860, resolved "that said Convention, when assembled, may consider all grievances impairing or affecting the equality and rights of the State of Georgia *as a member of the United States*," etc., "and determine the mode, measure, and time of redress."

It will be noticed, by the words we have italicized, that the power here given is "to consider all grievances impairing or affecting the equality and rights of the State of Georgia *as a member of the United States*." If the Convention, when called, had the power to use the extreme measure of secession, it is plain that at any rate the resolution was so worded as to induce the belief that they were only to consider the "*rights of the State of Georgia as a member of the United States*,"

and not as a separate State,—certainly not to *make* of her a separate State; not a word is said of secession. We will not, in this place, stop to consider whether the power to secede was delegated to the Convention. It is enough to show that, in the very inception of proceedings, there was manifested an intention to deceive the people by making them believe the Convention was called to consider their equality *in* the Union, and not the policy of seceding from it. When that Convention met, it proceeded, on January 19th, 1861, to repeal, rescind, and abrogate "the ordinance adopted by the *people of the State of Georgia*, in convention, on the second day of January in the year of our Lord seventeen hundred and eighty-eight, whereby the Constitution of the United States was assented to, adopted, ratified," etc.

The act of a superior cannot be abrogated by an inferior, not only because it is an inferior, but because it is not the *same* authority which did the original deed. The Constitution of the United States was made by delegates and *ratified by the people*. The Georgia Convention of January, 1861, was composed of delegates who were, of course, an inferior authority to the people who elected them, and their acts were never ratified by their superiors or principals. Hence the authority that made has not unmade. And we have shown how strongly Mr. Stephens puts it, at pages 20 and 40, that "it required the same power to unmake as it had to make it,"—the Constitution of the United States. That is, as it requires the ratification of the people to make the Constitution, it required the same to unmake it by the act of secession.

This failure of ratification by the people was no accidental matter. It seems to have been designedly done to usurp authority belonging to the people, for "Mr. Martin moved to take up his resolution directing that the ordinance of secession be published by proclamation of the Governor, and submitted to the people of this State for ratification by the 20th of February [then] next. The motion was lost." The Convention which rejected this motion knew the people would not ratify, because hardly half the voters of the State voted for delegates, of whom a majority were elected to oppose secession.*

* The shameless impostors who convened in Philadelphia in August, 1866, as conservative Unionists, said (what any one in the seceded States would have been hung for saying within five years previously), "We are inclined to doubt whether there ever was a time when a majority of the Southern people fully indorsed the doctrine of this constitutional right of secession."

And to show that there were more votes polled for Union than Secession candidates, Mr. Martin moved that "the Governor be requested to furnish the Convention with a statement of the result of the election for delegates to the Convention, specifying the whole number of votes polled in each county, and the number received by each candidate;" which was indefinitely postponed by a vote of 168 to 127; and the information sought by this motion has never, to this day, been made public, by newspaper publication or otherwise, so far as we have been able to discover, and we have searched for it in places where it was most likely to be found. This is, without doubt, the only instance, since Georgia was a State, in which such important information has been withheld from the public. It was all done to blindfold and cheat the people into that vortex into which they have since fallen. That so small a vote was polled (not one-half of the number of voters in the State, as was believed) was doubtless because Union men were unwilling to face the violence of Secessionists at the polls, and felt sure that the latter were determined to have secession or a civil war in the State. Under all these disadvantages, a majority of Unionists were elected to the Georgia and most other Conventions; but enough shrank from a discharge of their trusts to give majorities to the Secessionists in convention.

It has been seen that the act of calling a Convention made no intimation that it was expected to make a new Constitution for Georgia; and though the State had one as good or better than the one they substituted for it, they did not hesitate to exercise that power. That this Constitution, the least important of all their work, was the only part submitted to the people for ratification, shows that the Convention was fully conscious of the necessity of indorsement by the people. They were willing that the Constitution should be submitted for ratification, because they believed it would be approved; and had they believed that their other action in regard to secession would have stood the test of the public voice, the same disposition would have been made of their more important proceedings.

We have shown that the act of the Legislature calling a Convention did not intimate that it was authorized to consider secession; that a majority of the delegates were elected by constituencies opposed to it; that the Convention would not permit the votes by which it was elected to be made public (doubtless knowing that it would plainly show that a majority of the people of Georgia were opposed to seces-

sion); and that the Convention would not trust the people to say whether they consented to secession by a revocation of the ratification of the Constitution of the United States, although the vote *for* that ratification had been fairly made by a majority of the people of Georgia.

We have, therefore, the solemn consent of the people of Georgia to the ratification of the Constitution of the United States fairly given, and no consent to its repudiation. We think, therefore, that we have made out the propositions—

First. That no act of secession by Georgia could absolve the people of the State from their obligation to obey and submit to the laws of the United States;

Second. That if it could, they have never consented to such an act. Consequently, the faction that drove them into rebellion were rebels against Georgia and the United States, and the only loyal and true men to both were the Union men who opposed secession, the murder of our people, and the desolation of the country.

If secession were without authority from the people, the Confederate Government was established with less *pretense* of it, if possible. We have seen how fully and fairly the government of the United States was established by the consent of the people; how emphatically it was the government of their choice. First, through their representative agents who made it; and next, by the ratification of the people who ordained and established it. The Confederate Constitution was neither drawn up by their representative agents, nor established by their own personal ratification.

The Georgia Convention, elected for the doubtful purpose we have indicated, chose members to a Congress who usurped the power of making, as the former did of ratifying when made, the so-called "Confederate Constitution." Members of Congress have no power to make a Constitution, much less members of a Congress not elected by the people. To cap the climax of tyrannical usurpation, it was ratified, not by the people, but by two hundred and seventy-six men (that being the number in the Convention voting for it), acting on their own sole authority; the people having had no part either in making or ratifying it, in person or by delegates *elected for either purpose.*

They could have established a monarchy, a State religion, a hereditary peerage, with as much show of authority as the provisions "ordained;" and it would have been as much the Constitution of the people as the one imposed on them. The people had no part nor lot in it, except to pay and bleed.

It may have been opposed to the wishes of every voter in the Confederate States, as it doubtless was to those of a large majority, when the usurpers drove the people to fight *for* it, and *against* a government of their choice. For it has been shown that during the whole war the Constitution of the United States was the only chosen government of the people of Georgia, and the Confederate usurpation had no pretense to such a claim. The savages in Australia had as much voice in making it as the people of Georgia; and this was the "self-government" for which the usurpers made their dupes die, and made widows and children beg and starve.

The usurped power of making a Constitution was immediately followed by an indirect usurpation of the powers therein given to the people,—a usurpation within a usurpation. The Confederate Constitution gave to Congress the power to declare war, and it has been shown that secession did not necessarily involve war. The usurpers immediately proceeded to fire on the "Star of the West," to seize Forts Sumter and Pulaski, and other property of the United States, —all of which were acts of war,—without the consent of the people; for they had the right to elect members to Congress who could then have declared war, as it was never intended that the people should be involved in such a calamity without their consent through their representatives in Congress; and they had no such representatives, because the Congressmen from Georgia were elected neither by the people nor by those having their authority to elect them. Talk about submission! here was submission to the most barefaced usurpation in history,—a people utterly ruined by fighting *against* the government of their choice, and *for* one forced on them! No wonder that such a cause failed. No wonder that disaffection to the rebellion began to show its head so soon as it dared. No wonder, as popular enthusiasm oozed away, popular resistance waned. No wonder that a people who had never felt oppression found out that they had been deceived by gasconade and lies when real oppression came. No wonder that soldiers deserted from a cause into which they had been cheated and forced: the wonder is that they submitted to be so cheated and forced. A thousand men, made terribly in earnest by real tyranny, would have been more dangerous than ten thousand by sham oppression. What cost millions to subdue men fighting against fancied wrongs, would have cost billions had they been struggling against real ones. The material left in the South when the war

ended, if impelled by a people unanimous by their free consent, would have been twice as formidable as the great means at its commencement, used by men bullied and deluded into a useless and wicked war. If such courage and dash were terrible in such a cause, what would they have been in a war that would have justified such a stake as the South risked and lost in the contest?

The usurpers not only surreptitiously imposed a government on their own people, but they tried to force it on Kentucky, Missouri, and "My Maryland," all of whom persisted in being "down-trodden" in spite of those "fighting for self-government." It is said, "History repeats itself;" but here is one exception, for the insolence of this usurpation has never had a parallel, and it is to be hoped never will.

And these insane and reckless usurpers dared to call themselves "the State," and say they were "true to her," while the only true and loyal men to Old Georgia were those who opposed the whole "wicked concern." While they arrogated to themselves the name of "the South," they took and executed measures all the while to ruin "the South," until she was humiliated by conquest, her slaves emancipated and put in high places,—even in the seat once occupied by their counterfeit President,—on the bench and in the jury-box, once sacred to the white man; and, after all this harvest of woe, reaped by usurpation, they still parade themselves before their suffering countrymen and countrywomen as "The South."

Since writing the foregoing, we have received the second volume of Mr. Stephens's "War between the States," and notice, at page 323, that, after stating he was appointed by the Georgia Convention a delegate to the Montgomery Congress of States, he says he offered in that body resolutions instructing the delegates from Georgia, among other things, that the Constitution to be formed for the permanent government of the Confederate States should "not be binding or obligatory upon the people of Georgia unless submitted to, approved, and ratified by this [the Georgia] Convention."

Why not, Mr. Stephens, have said a Convention of the people "*for the purpose of ratification*"? Like the Convention when it laid Mr. Martin's resolution on the table, were you afraid to trust the people?—afraid to trust them to ratify as well as to make their Constitution? The old Constitution was not so made.

The reader will notice how Mr. Stephens seems to have been impressed with the necessity of the ratification of the

Convention, but he had forgotten his maxims which required the same power to unmake as to make.

The people of Georgia had "given the finishing touch," and thereby made, by their ratification, the Constitution of the United States; and now he is for superseding it by another ratification, not by the people, nor even by delegates elected "*for that purpose*" by them. He had also forgotten what he says at page 144, vol. i., that the sovereign powers of the States (resumed by secession) "could only be delegated by the people in their sovereign capacity," and that "this delegation could be made only by a Convention of the people *for that purpose*" (italics ours). . . . "Those [sovereign] powers had to be *resumed* by the people of each State separately [as was said to be done by secession], and taken by them from that set of agents and delegated to another set of agents." This "set of agents" was the United States in one case, and the Confederate States in the other.

We have seen how fairly and fully it was done in the case of the United States by the people through delegates elected "for that purpose," and how it was not done at all in the case of the Confederate States.

Mr. Stephens proceeds in still stronger terms, if possible, and says, "All new delegations of power, as well as all changes of agents, in whom the delegated powers were to be intrusted, could *only* be made by *the people themselves* of each State in their sovereign capacity." It will be seen by our italics that Mr. Stephens believes that delegation—to be done by ratification—can be by the people only, and we have seen that the Confederate Constitution, so far from having been ratified by the people, was made by a Congress *not* elected by them, and ratified by a Convention chosen for *no such object;* and it was more important that delegates should have been chosen *for the purpose of ratifying* the Constitution of the Confederate, than the United States, because, on the former occasion, the delegates who were appointed to the Secession Convention met for an equivocal purpose, as shown, while there was no doubt or equivocation about the United States Constitution. Mr. Stephens seems also to have forgotten what he asserted, at pages 83 and 196, that sovereignty could not pass by implication. Now, if sovereignty could not pass to the Confederate Government unless by express terms, and the Seceded States, after secession, "had the sole power to tax, to regulate trade, etc.," and if powers "with the right to pass laws acting directly upon the citizens of the sovereign States . . . could only be delegated by the

people" to the Confederacy,—according to the principles laid down at page 144, vol. i.,—by what authority did "the Confederacy" go into operation? By what authority were armies raised, officers commissioned, and men killed?—for none but sovereign power can authorize the killing of men. And by what authority did Mr. Stephens preside—ably, we have no doubt—as second officer over such unauthorized government? Worse than unauthorized, worse than a humbug,—a criminal, *pseudo* government. And Mr. Stephens himself, according to his own doctrine and facts, an officer of a usurpation.

We are authorized to say this by Mr. Stephens's book, and only draw the attention of the reader to what is proclaimed by him on the deliberate and grave pages of his history.

Let not Mr. Stephens lay the flattering unction to his soul that he has the authority of his State for following the flag of the usurpers,—usurpers who were false to Georgia, that had trusted them; false to the United States, that did, and would have continued to, protect their property as no other power could; and who would again, if they dared, be false to the United States, which has spared them, contrary to their expectations.

The reader must judge whether Mr. Stephens's pen has not cancelled the debt of the country to his tongue. We have not the heart, if we thought so, to say it of one who once chided the howling mob that was dragging his country to ruin, though his pen now traces for it the path to a repetition of the same violence and folly. Better that he should give as an excuse that he shrank from the flutterings of the blue cockade,—as drunk with devilishness as was the tricolor in France on a like occasion,—and the prospects of a civil war among his neighbors, than rely on the unsubstantial pretense that the people of Georgia ever seceded from the Union, or had the power, if seceded, to absolve themselves from their obligation to obey the laws of the United States.

To help out a bad argument, Mr. Stephens has misnamed his book "The War between the States," when there was not the first act of war by a State against a State; for Governor Brown's lawless, forcible entry and detainer of the Augusta Arsenal and Fort Pulaski had not the authority of his State for his ouster.

It was a war of a *pseudo* Confederacy against the United States. In the name of the one or the other were armies raised, commissions given, and men killed; not a State flag was raised, nor hardly a commission given, by a State on either side, unless by authority of their respective superior

governments; and yet Mr. Stephens misnames it a "War between the States."

We do not know that a single State even had a flag under which its soldiers fought. And though "The Confederacy" was in labor all its life to bring forth one, we believe it ended in an abortion. If it had succeeded, instead of the eagle, the appropriate bird would have been an ostrich with its head in the sand, emblematical of obstinate and voluntary blindness.

Blind to pretend to secure slavery in the only way by which it ever could have been destroyed, or, as Mr. Stephens would have it, blind to have risked it to test the abstract right of secession; blind not to have responded to Mr. Lincoln's and Mr. Seward's willingness—as expressed at the Hampton Roads Conference, a short time before Lee's surrender—to leave to the courts the question of the freedom of the slaves, or to pay for them if emancipated (see vol. ii., pages 610 to 671); blind to see in every defeat a victory; blind not to have seen and appreciated the power and resources of the enemy; blind not to have accepted Mr. Lincoln's offer of peace, after having a hundred days to consider it; blind not to have made peace after General Lee informed the Confederate Senate that no power could save the cause, and that "the army and people ought to be saved." Born blind, lived in blindness, and died stone-blind!

To the reader not blinded by prejudice we think we have redeemed our pledge to show that the propositions stated in the contents of Mr. Stephens's Eleventh Colloquy are not true. On the contrary, we have shown "that the Constitution is (not) a compact between sovereign States," but a fundamental law of the people of the United States; that the government of the United States is not strictly a Federal government, as under the Articles of Confederation,—a government of and for States,—but a government operating on the people only as State laws operate on them. That a State, "for itself," might have had "the right to judge of infractions" of a *compact*, if the Constitution had only been such between States; yet, being a fundamental *law* operating on the people, they have no right to judge of the constitutionality of the laws of the United States, and execute such judgment against that of the United States Supreme Court. That though a State may judge of "the mode and measure of redress," it cannot execute any judgment that will arrest the execution of the laws of the United States.

That though a State may withdraw from the Union so far as to abandon any participation in the government of the

United States, and its rights and privileges as a member of the Union,—if there be any union of States,—it cannot thereby absolve any of the citizens of the United States from obedience to that government so lawfully established over them by consent of the States and the people.

That "the compact,"—if a compact,—far from having been broken by the "thirteen States," as charged by Mr. Stephens, has, in fact, been broken by Georgia only, and that on several occasions.

Finally, if we have failed to negative any of Mr. Stephens's propositions, and they should all stand established, still the true history of secession shows that the people of Georgia never did dissolve their connection with the government of the United States; and that the war was by rebels against the State of Georgia, as well as the United States.

If the case required, we might go further, and admit that if Georgia not only had the right, but, in fact, did secede, secessionists could not deny the same right to the "thirteen" to judge the compact had not been broken, and to wage a war "between the States" to conquer the seceded sisters, and to claim all the rights of conquest over their subjugated enemy. But, having spent so much time in making out our case on other grounds, we do not care to occupy such position, though as impregnable as it is true.

THE END.

A REVIEW

OF THE

FIRST VOLUME

OF

ALEXANDER H. STEPHENS'S

"WAR BETWEEN THE STATES."

BY

CONSTITUTIONALIST.

PHILADELPHIA:
J. B. LIPPINCOTT & CO.
1872.

LIBRARY OF CONGRESS
0 012 027 824 1